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No. 84-773 (9)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

MICHAEL BENDER, *et al.*,
Petitioners,

v.

THE WILLIAMSPORT AREA SCHOOL DISTRICT, *et al.*

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 13, 1984
CERTIORARI GRANTED FEBRUARY 19, 1985

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Docket No. 83-3284

BENDER, Lisa; BRAGGS, Morris, A Minor, By BRAGGS, Mrs. Mary, His Guardian Ad Litem; ROBB, Toni, KRINER, Robin; HUNTER, Kerri, a Minor, by HUNTER, Mr. & Mrs. Carl, her guardians Ad Litems; HERZOG, Brenda Kay, A Minor, by HERZOG, Mr. and Mrs. Louis, Her Guardian Ad Litem; SEEVERS, Shawn, a Minor by SEEVERS, Mr. and Mrs. Gerald, His Guardian Ad Litems; STRAYER, Peter, a Minor, by STRAYER, Mr. and Mrs. Charles; His Guardian Ad Litems; BROSSMAN, Bruce, a Minor by BROSSMAN, Mr. and Mrs. Bruce, His Guardian Ad Litems, and MARSHALL, Denise, a Minor by MARSHALL, Mr. and Mrs. Dennis, Her Guardian Ad Litems and All Others Similarly Situated

vs.

THE WILLIAMSPORT AREA SCHOOL DISTRICT; OSCAR KNADE, SUPERINTENDENT OF WILLIAMSPORT AREA SCHOOL DISTRICT; RICHARD F. EBERHART, PRESIDENT OF THE WILLIAMSPORT AREA SCHOOL BOARD; JANET C. HARRISON, MEMBER OF THE WILLIAMSPORT AREA SCHOOL BOARD; G. KENT BITNER, MEMBER OF THE WILLIAMSPORT AREA SCHOOL BOARD; ARTHUR E. DUNCAN, MEMBER WILLIAMSPORT AREA SCHOOL BOARD; JOYCE S. HERSHBERGER, MEMBER, WILLIAMSPORT AREA SCHOOL BOARD; RICHARD L. MERK, MEMBER WILLIAMSPORT AREA SCHOOL BOARD; GENE SMITH, MEMBER WILLIAMSPORT AREA SCHOOL BOARD; KERMIT SMITH, MEMBER, WILLIAMSPORT AREA SCHOOL BOARD; JOHN C. YOUNGMAN, JR., MEMBER WILLIAMSPORT AREA SCHOOL BOARD; WAYNE A. NEWTON, PRINCIPAL WILLIAMSPORT AREA HIGH SCHOOL

JOHN C. YOUNGMAN, JR., one of the Defendants,
Appellant

(D.C. Civil No. 82-692)

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1983	
Sept. 12	Appellees' request for oral argument, filed. Send to merits panel.
Sept. 13	Disclosure statement of amicus curiae, Catholic League for Religious and Civil Rights, filed.
Sept. 19	Disclosure Statement of amici curiae, Baptist Joint Committee on Public Affairs and The National Assoc. of Evangelicals, filed.
Sept. 21	Disclosure Statement of amici curiae, American Jewish Congress and Anti-Defamation League of B'Nai Brith, filed.
Sept. 21	Motion by Amici Curiae American Jewish Congress and Anti-Defemation League of B'Nai Brith for leave to participate in oral argument, w/svc., filed. Send to Merits Panel.
Oct. 3	Disclosure Statement of Amici Curiae, Americans United for Separation of Church and State, filed.
Dec. 2	Motion by appellees, The Williamsport Area School District, et al., pursuant to Rule 21, Federal Rules of Civil Procedure, to add parties as appellees, w/svc., filed.
Dec. 7	Submitted on above motion. Coram; Send to Merits.
Dec. 29	Letter dated 12/22/83, from Samuel E. Ericsson, Esq., co-counsel for appellee, w/enclsure, rec'd for the information of the Court, (not filed unless the Ct. directs.)
[1984]	
Aug. 15	Order (Aldisert, Ch.J., Seitz, Adams, Gibbons, Hunter, Weis, *Garth*, Higginbotham, Sloviter & Becker, C.J.s., & Brotman, D.J.) denying petition for rehearing. Judge Gibbons would grant the petition for rehearing, filed.

DATE	FILINGS—PROCEEDINGS
1984	
Aug. 15	Amended Order (Aldisert, Ch.J., Seitz, Adams, Gibbons, Hunter, Weis, *Garth*, Higginbotham, Sloviter & Becker, C.Js, & Brotman, D.J.) denying petition for rehearing. Judges Gibbons and Weis would grant the petition for rehearing, filed.
Aug. 22	Motion by appellee to stay mandate to and including November 13, 1984, w/serv. filed.
Nov. 15	Petition for writ of certiorari to the U.S. Supreme Court and Appendix to the petition for writ of cert. from counsel for petitioner w/certificate of serv. Received. (sa)
1985	
Jan. 10	Copy of letter dated January 4, 1985, form Ms. Nancy Zajac, Managing Editor. Received. (sa)
Jan. 16	Letter dated 1/16/85 to Ms. Zajac advising the Court has written West Publishing Company in reference to the incorrect designation.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 82-0698

BENDER, Lisa; BRAGGS, Morris, A Minor, By BRAGGS, Mrs. Mary, His Guardian Ad Litem; ROBB, Toni, KRINER, Robin; HUNTER, Kerri, a Minor, by HUNTER, Mr. & Mrs. Carl, her guardians Ad Litems; HERZOG, Brenda Kay, A Minor, by HERZOG, Mr. and Mrs. Louis, Her Guardian Ad Litem; SEEVERS, Shawn, a Minor by SEEVERS, Mr. and Mrs. Gerald, His Guardian Ad Litems; STRAYER, Peter, a Minor, by STRAYER, Mr. and Mrs. Charles; His Guardian Ad Litems; BROSSMAN, Bruce, a Minor by BROSSMAN, Mr. and Mrs. Bruce, His Guardian Ad Litems, and MARSHALL, Denise, a Minor by MARSHALL, Mr. and Mrs. Dennis, Her Guardian Ad Litems and All Others Similarly Situated,

Plaintiffs,

v.

THE WILLIAMSPORT AREA SCHOOL DISTRICT; OSCAR KNADE, SUPERINTENDENT OF WILLIAMSPORT AREA SCHOOL DISTRICT; RICHARD F. EBERHART, PRESIDENT OF THE WILLIAMSPORT AREA SCHOOL BOARD; JANET C. HARRISON, MEMBER OF THE WILLIAMSPORT AREA SCHOOL BOARD; G. KENT BITNER, MEMBER OF THE WILLIAMSPORT AREA SCHOOL BOARD; ARTHUR E. DUNCAN, MEMBER WILLIAMSPORT AREA SCHOOL BOARD; JOYCE S. HERSHBERGER, MEMBER, WILLIAMSPORT AREA SCHOOL BOARD; RICHARD L. MERK, MEMBER WILLIAMSPORT AREA SCHOOL BOARD; GENE SMITH, MEMBER WILLIAMSPORT AREA SCHOOL BOARD; KERMIT SMITH, MEMBER, WILLIAMSPORT AREA SCHOOL BOARD; JOHN C. YOUNGMAN, JR., MEMBER WILLIAMSPORT AREA SCHOOL BOARD; WAYNE A. NEWTON, PRINCIPAL WILLIAMSPORT AREA HIGH SCHOOL,

Defendants.

28 U.S.C. 1331, 1343—Defendants violated plaintiffs First Amendment Rights of Freedom of Speech and Religion and the free exercise thereof.

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1982		
June 2	1	COMPLAINT—
" "		NOTICE & CONSENT FORM—re Magistrate Referral handed to Atty.
" "	2	MOTION—of plaintiff for special appointment to serve process, and
" "		ORDER—appointing Ernst Strosahl to serve the complaint on defendants. Copy to Atty.
" "	3	SUMMONS—issued and together with consent forms to Atty. Seevers office.
" "		J.S. 5 (Original docket to Judge Muir)
June 8	4	MEMO FROM WMSPT DEPUTY—Judge M cannot take case. Knows parties.
June 8		CASE REASSIGNED—to Judge Nelson mep
June 9		SUMMONS—returned with affidavit by Ernst F. Strosahl stating that on June 4, 1982 he served the summons and complaint on John C. Youngman, Jr., Wayne Newton, Oscard W. Knade, Jr., John Vohdon, School District Secr., Richard F. Eberhart, Janet C. Harrison, Kent G. Bittner, Arthur E. Duncan, Joyce S. Hershberger, Richard L. Merk, Gene Smith and Kermit O. Smith.
June 22	5	MOTION—of defendants Williamsport Area School District Et, Al for enlargement of time to file responsive pleading, and C. of S. and

DATE	NR.	PROCEEDINGS
1982		
June 22		ORDER—It is hereby ordered that the relief requested by the Motion is granted and that said defts are given an extension of 20 days from the date when a responsive pleading to the complaint would have been due to file said responsive pleading i.e. until July 17, 1982. (N) Copies to Bahl, Stuart, and Seevers.
July 16	6	ANSWER—of defendants The Williamsport Area School District, et al to plaintiffs' complaint for declaratory and injunctive relief, and C of S.
July 19	7	MOTION—of defendants, The Williamsport Area School District, et al for Summary Judgment, and
" "		STATEMENT—of Material Facts Not in Dispute, and
" "		CERTIFICATE—of NonConcurrence, and C of S.
" "	8	AFFIDAVIT—of Oscar W. Knade, Jr., defendant in support of Motion for Summary Judgment.
" "	9	BRIEF—of defendant, Williamsport Area School District, et al sin support of its Motion for Summary Judgment, and C of S.
July 28	10	MOTION—of plaintiffs, Lisa Bender, et al for enlargement of time to file responsive brief, and .
" "		CERTIFICATE—of Concurrence, and C of S.
July 28		ORDER—that the relief requested by the motion is granted and that said plaintiffs are given an extension of thirty days from the date when a responsive Brief to the

DATE	NR.	PROCEEDINGS
1982		
		motion for summary judgment would have been due to file said responsive brief, until September 3, 1982. attached to doc 10. Copies to Bahl, Stuart, and Seevers.
Aug. 10	11	NOTICE—of plaintiffs, to take the depositions of Oscar Knade, and Wayne Newton, on August 24, 1982 at 9:30 a.m. in Williamsport, Pa. jfg
Sept. 3	12	MOTION—of pltfs for summary judgment & cert of nonconcurrence & c of s.
" "	13	BRIEF—of pltfs in support of motion for summary judgment & c of s.
" "	14	AFFIDAVIT—of atty for pltfs that he personally communicated w/counsel of Lubbock Independent School District & was informed that the district has filed writ of certiorari to US Supreme Ct of decision of 5th circuit ct of appeals.
" "	15	AFFIDAVIT—of pltf Lisa Bender, pltf.
" "	16	TRANSCRIPT—of deposition of Wayne A. Newton & Oscar Knade taken. —by pltfs on 8/24/82 in Wmspt.
Sept. 10	17	MOTION—of defts Williamsport High School Dist et al for enlargement of time to file responsive brief & cert. of concurrence & c of s.
Sept. 13		ORDER—that defts are given an extension of time until 10/4/82 to file responsive brief & to respond to affidavits & statement of material facts submitted by pltfs. (N) CC to counsel from CO.

DATE	NR.	PROCEEDINGS
1982		
Oct. 6	18	REPLY BRIEF—of defendants Williamsport Area School District, et al in support of its Motion for Summary Judgment and contra plaintiffs' Motion for Summary Judgment, and C of S.
Oct. 14	19	REPLY BRIEF—of plaintiff to Defendants Brief in Opposition to plaintiff's Motion for Summary Judgment, and C of S.
Nov. 9	20	ORDER—presently pending before court are cross-motions for summary judgment. Record is incomplete as to exact nature of activity period, type of activities or clubs that have been & would be approved & what proposed groups if any have been denied approval. Ordered that parties shall submit affidavits within 15 days of this order addressing questions identified in this order & any other info deemed appropriate. (N) CC to counsel of record from N's.
Nov. 24	21	AFFIDAVIT—of Wayne E. Newton, Principal of Wmsp. Area High School.
Nov. 23	22	AFFIDAVIT—of GERALD W. SEEVERS, ATTY. FOR PLTFS. C OF S.
Nov. 23	23	SUPPORTING—Exhibit—COPY OF WRIT OF CERTIORARI FILED BY LUBBOCK INDEPENDENT SCHOOL DISTRICT. C OF S. br
1983		
May 6	24	AFFIDAVIT—of Lisa Carol Bender, plf in support of complaint.
May 6	25	STIPULATION—of counsel re Faculty Advisors & Bulletin Board & Public Address System, and

DATE	NR.	PROCEEDINGS
1983		
May 6		ORDER—of Court, approving stipulation. copies to Counsel of Record from Scr. office.
May 12	26	OPINION/—of Judge Nealon. CC to counsel from N's. Orig in vault.
May 12	27	ORDER—(1) summary judgment is granted in favor of the defts & against pltfs on pltfs free exercise claim (2) summary judgment is granted in favor of pltfs & against defts on pltfs freedom of speech claim (3) clerk shall close case. (N) CC to counsel from N's office. Orig in vault.
" "		JS 6
June 10	28	PRAECIPE—for appearance of John C. Youngman, Jr., Esq. as counsel for John C. Youngman, Jr. one of the defts in this matter.; C. of S.
June 10	29	NOTICE—of Appeal, filed by Atty Youngman, Jr., from Order of Court of May 12, 1983. ($70.00 Fee Pd) Copy to Seevers, Ericksson, Stuart, Bahl, Youngman, Jr. and Court with T/L; and to Court of Appeals with T/L, C/C of order of May 12, 1983 and c/c of docket.
June 16	30	TPO—signed by Atty Youngman, Jr. stating a transcript is already on file.
June 20		RECORD COMPLETE FOR PURPOSE OF APPEAL.
June 20		CERTIFIED COPY OF DOCKET ENTRIES SENT IN LIEU OF RECORD.
June 21	31	LETTER(COPY)—from ct of appeals to Atty Youngman dated 6/20/83—appeal docketed to CA # 83-3284. Info cc to J. Nealon from Scr. CO.

DATE	NR.	PROCEEDINGS
1983		
June 23	32	RECEIPT—for cert. copy of docket entries in lieu of record received by Ct. of Appeals on 6/22/83.
Aug. 12	33	BILL OF COSTS—and attorneys Fees filed by atty for plfs; and AFFI.—of Gerald W. Seevers in support; C. of S.
Sept. 2	34	OBJECTIONS—of Defendants to Plaintiffs' Bill of Costs and Attorneys' fees, and C of S.
Sept. 13	35	REPLY—of plfs to the Defts OBjections to Plfs' Bill of Costs and Attorneys Fees; C. of S.
Sept. 15	36	REPLY—of pltfs to defts' objections to pltf's bill of costs & attys' fees & supplement to pltfs' petition w/affidavit of Atty Samuel E. Ericsson attached thereto & c of s.
Sept. 23	37	BRIEF—of defts in opposition to pltfs' reply to defts' objections & c of s.
Dec. 14	38	MEMO—of Judge Nealon; and ORDER—IT IS HEREBY ORDERED THAT: the instant petition for costs and attorneys' fees shall be held in abeyance pending the outcome of the appeal presently before the Court of Appeals in the above captioned matter. (N) Copies to attys.
1984		
Aug. 14	39	LETTER—to Judge Nealon from Atty Bahl dated 8/13/84 Re: Status Report from defts.

DATE	NR.	PROCEEDINGS
1984		
Aug. 20	40	INFO—Sheet from U.S. Court of Appeals: An order was filed on August 15, 1984 denying the petitioner's rehearing. jfg
Aug. 30	41	S/BRIEF—of defendants in support of its objections to plaintiffs bill of costs and Attorney's fees, and C. of S. jfg
Sept. 4	42	INF.—sheet from Court of Appeals on post decision matters; An Order was filed on 8/28/84 staying the issuance of the mandate to 11/13/84 pending the filing of a petition for writ of certiorari in the Supreme Court of the United States. Inf. copy to Judge Nealon.
Sept. 12	43	LETTER—dated 9/11/84 from Atty Samuel E. Ericson to J. Nealon re: pltfs request that court take no further action on petition for costs & attys fees until final disposition by Supreme Court of U.S. w/attachments thereto & c of s.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 82-0692

LISA BENDER; MORRIS BRAGGS, A MINOR, BY MRS. MARY BRAGGS, HIS GUARDIAN AD LITEM; TONI ROBB; ROBIN KRINER; KERRI HUNTER, A MINOR, BY MR. AND MRS. CARL HUNTER, HER GUARDIANS AD LITEMS; BRENDA KAY HERZOG, A MINOR, BY MR. AND MRS. LOUIS HERZOG, HER GUARDIAN AD LITEM; SHAWN SEEVERS, A MINOR, BY MR. AND MRS. GERALD SEEVERS, HIS GUARDIAN AD LITEMS; PETER STRAYER, A MINOR, BY MR. AND MRS. CHARLES STRAYER, HIS GUARDIAN AD LITEMS; BRUCE BROSSMAN, A MINOR, BY MR. AND MRS. BRUCE BROSSMAN, HIS GUARDIAN AD LITEMS, AND DENISE MARSHALL, A MINOR, BY MR. AND MRS. DENNIS MARSHALL, HER GUARDIAN AD LITEMS, AND ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

THE WILLIAMSPORT AREA SCHOOL DISTRICT; OSCAR KNADE, SUPERINTENDENT OF WILLIAMSPORT AREA SCHOOL DISTRICT; RICHARD F. EBERHART, PRESIDENT OF THE WILLIAMSPORT AREA SCHOOL BOARD; JANET C. HARRISON, MEMBER OF THE WILLIAMSPORT AREA SCHOOL BOARD; G. KENT BITNER, MEMBER OF THE WILLIAMSPORT AREA SCHOOL BOARD; ARTHUR E. DUNCAN, MEMBER WILLIAMSPORT AREA SCHOOL BOARD; JOYCE S. HERSHBERGER, MEMBER, WILLIAMSPORT AREA SCHOOL BOARD; RICHARD L. MERK, MEMBER WILLIAMSPORT AREA SCHOOL BOARD; GENE SMITH, MEMBER WILLIAMSPORT AREA SCHOOL BOARD; KERMIT SMITH, MEMBER, WILLIAMSPORT AREA SCHOOL BOARD; JOHN C. YOUNGMAN, JR., MEMBER WILLIAMSPORT AREA SCHOOL BOARD; WAYNE A. NEWTON, PRINCIPAL WILLIAMSPORT AREA HIGH SCHOOL,

Defendants.

[Filed June 2, 1982]

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW, the Plaintiffs, by counsel, and state their cause of action as follows:

1. This is an action for declaratory judgment and permanent injunction, brought by students in the Williamsport High School, through the parents of those students who are minors, and on behalf of all others similarly situated, against the Williamsport Area School District, hereinafter, "the District", the Superintendent of the District, The President, and each member of the School Board of the District, in their individual and official capacities.

2. The Court has jurisdiction over this action under 28 U.S.C. § 1331 and 1343, and 42 U.S.C. § 1983 and 1985. The amount in controversy exceeds the sum of Ten Thousand ($10,000.0) Dollars exclusive of interests and costs.

3. Venue resides on this Court pursuant to 28 U.S.C. § 1391.

4. Plaintiff, Lisa Bender, age 18, resides at R. D. # 2, Box 33, Linden, Lycoming County, Pennsylvania. She is enrolled in the twelfth grade at Williamsport Area High School, Williamsport, Pennsylvania.

5. Plaintiff, Morris Braggs, age 17, resides at 513 Park Avenue, Lycoming County, Williamsport, Pennsylvania. He is enrolled in the twelfth grade at Williamsport Area High School, Williamsport, Pennsylvania. He brings this action by and through Mary Braggs, his mother and natural guardian.

6. Plaintiff, Toni Robb, age 19, resides at R.D. # 3, Cogan Station, Lycoming County, Pennsylvania. She is enrolled in the twelfth grade at Williamsport Area High School, Williamsport, Pennsylvania.

7. Plaintiff, Robin Kriner, age 18, resides at R. D. # 1, Box 31, Cogan Station, Lycoming County, Pennsylvania. She is enrolled in the twelfth grade at Williamsport Area High School, Williamsport, Pennsylvania.

8. Plaintiff, Kerri Hunter, age 17, resides at 2128 Hillside Avenue, Williamsport, Lycoming County, Pennsylvania. She is enrolled in the twelfth grade at Williamsport Area School District, Williamsport, Pennsylvania. She brings this action by and through Mr. and Mrs. Carl Hunter, her parents and natural guardians.

9. Plaintiff, Brenda Kay Herzog, age 17, resides at 710 Funston Avenue, Williamsport, Lycoming County, Pennsylvania. She is enrolled in the twelfth grade at Williamsport Area School District, Williamsport, Pennsylvania. She brings this action by and through Mr. and Mrs. Louis Herzog, her parents and natural guardians.

10. Plaintiff, Shawn Seevers, age 17, resides at 2532 Grand Street, Williamsport, Lycoming County, Pennsylvania. He is enrolled in the eleventh grade at Williamsport Area School District, Williamsport, Pennsylvania. He brings this action by and through Mr. and Mrs. Gerald Seevers, his parents and natural guardians.

11. Plaintiff, Peter Strayer, age 16, resides at 1028 West Fourth Street, Williamsport, Lycoming County, Pennsylvania. He is enrolled in the eleventh grade at Williamsport Area School District, Williamport, Pennsylvania. He brings this action by and through Mr. and Mrs. Charles Strayer, his parents and natural guardians.

12. Plaintiff, Bruce Brossman, age 17, resides at 835 Race Street, Williamsport, Lycoming County, Pennsylvania. He is enrolled in the eleventh grade at the Wil-

liamsport Area School District, Williamsport, Pennsylvania. He brings this action by and through Mr. and Mrs. Bruce Brossman, his parents and natural guardians.

13. Plaintiff, Denise Marshall, age 16, resides at 1501 Princeton Avenue, Williamsport, Lycoming County, Pennsylvania. She is enrolled in the eleventh grade at the Williamsport Area School District, Williamsport, Pennsylvania. She brings this action by and through Mr. and Mrs. Dennis Marshall, her parents and natural guardians.

DEFENDANTS

14. Dr. Oscar Knade, is Superintendent of the Williamsport School District and is sued in that capacity.

15. The Willamsport Area School District is the governmental agency created under the laws of the Commonwealth of Pennsylvania charged with providing public education within the boundaries of the City of Williamsport, Townships of Old Lycoming, Lycoming, Woodward, Hepburn, and Lewis.

16. Richard F. Eberhart, is the President of the Williamsport School Board, and is sued in that capacity.

17. Janet C. Harrison is a member of the Williamsport Area School Board and is sued in that capacity.

18. G. Kent Bitner, is a member of the Williamsport Area School Board and is sued in that capacity.

19. Arthur E. Duncan is a member of the Williamsport Area School Board and is sued in that capacity.

20. Joyce S. Hershberger is a member of the Williamsport Area School Board and is sued in that capacity.

21. Richard L. Merk is a member of the Williamsport Area School Board and is sued in that capacity.

22. Gene Smith is a member of the Williamsport Area School Board and is sued in that capacity.

23. Kermit Smith is a member of the Williamsport Area School Board and is sued in that capacity.

24. John C. Youngman, Jr., is a member of the Williamsport Area School Board and is sued in that capacity.

25. Wayne A. Newton is Principal of the Williamsport Area High School and is sued in that capacity.

COUNT I

26. The Williamsport Area High School allows students to join and participate in groups called student clubs.

27. Policies of the Williamsport Area High School allow student clubs in areas such as student government, Key Club, Language Clubs, Chess Club, Peer Helpers, and Political Club.

28. The Williamsport Area High School allows student clubs to meet from 7:55 a.m. to 8:23 a.m. each Tuesday and Thursday mornings during the regularly scheduled activity period.

29. The Williamsport Area High School allows student clubs to meet before and after school hours, which are defined as the hours during which classes are held, 7:45 a.m., through 2:23 p.m.

30. Williamsport Area High School allows student clubs in which students exchange ideas and personal opinions on topics of politics, history, community service, cultural differences, personal growth and development.

31. On or about September 15 and September 22, 1981, a group of students enrolled in Williamsport Area High School made a request to reorganize [sic] and allow meetings of a student club to be called "Petros", which would meet for the purposes of aiding each other in his or her social, emotional and intellectual personal growth and development by prayer, the application of God's Holy Word to their problems and sharing of personal experiences, during the student activity period on Tuesday and Thursday.

32. Wayne A. Newton, Principal of the Williamsport Area High School and Dr. Oscar Knade, Superintendent of the District denied recognition and permission for the Petros group to meet on the grounds its meetings would be religious in content.

33. The students who requested to meet in the Petros group petitioned the Williamsport Area School Board on January 2, 1982, for recognition and permission to meet. These requests were denied.

34. The denial by defendants of plaintiffs' request for recognition and permission to meet on grounds of the religious content of the proposed meetings, violates the right of plaintiffs under the First Amendment to the Constitution of the United States, to exercise freedom of speech without regulation or restriction by the state imposed on the basis of the content of the speech.

COUNT II

35. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 34 above.

36. Defendants' discrimination based on the content of speech of plaintiffs' proposal [sic] meetings violates civil rights guaranteed to plaintiffs under 42 U.S.C. § 1983.

COUNT III

37. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 36 above.

38. Defendants have coordinated and cooperated among themselves to perform the actions alleged above, thus conspiring to violate civil rights of the plaintiffs in violation of 42 U.S.C. § 1985.

COUNT IV

39. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 38 above.

40. Plaintiffs are Christians who believe they have a duty to perform all tasks in school to the glory of God, to pray during the day, including the school day, to worship with their fellow Christians and to share with each other how their religious faith aids them with their daily problems.

41. The rights and privileges requested by plaintiffs for their proposed meetings are the same as the rights and privileges routinely accorded to other student groups for expression of ideas with non-religious content.

42. Defendants' refusal to allow plaintiffs to hold their proposed meetings violated the rights of plaintiffs to the free exercise of their religious beliefs under the First Amendment to the Constitution of the United States, and constitutes a failure to give reasonable accommodation to the religious beliefs of plaintiffs.

COUNT V

43. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 42 above.

44. The above-alleged actions of defendants violate the right of plaintiffs to the equal protection of the law under the Fourteenth Amendment to the Constitution of the United States.

COUNT VI

45. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 44 above.

46. The above-alleged actions by defendants violates the prohibition of the Establishment Clause of the First Amendment to the Constitution of the United States against state hostility toward religion.

COUNT VII

47. Plaintiffs incorporate by reference the allegations contained in paragraph 1 through 46 above.

48. The above-alleged actions by defendants violates Article 1 Sections 3 and 7 of the Constitution of the Commonwealth of Pennsylvania.

CLASS ACTION ALLEGATIONS

49. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 48 above.

50. This suit is maintainable as a class action under Federal Rule of Civil Procedure 23(a) and 23(b) 1 and 2.

51. The number of students who belong to said class are at least forty-five (45) but can include the number of students who wish to engage in prayer during the school day which could be over two thousand (2,000) students.

52. The class in this action consists of all students enrolled in Williamsport Area High School who seek to engage in voluntary religious activity within the boundaries of the school property.

53. The named plaintiffs are adequate representatives of the class because they are similarly situated in all material respects with other class members.

54. The members of the class have in common the following questions of law and fact:

1. All facts concerning the matter of the school and the facilities sought to be used are common to all class members;

2. There is a common question of law whether the students have a constitutional right under the Freedom of Speech Clause of the First Amendment of the United States Constitution. This includes Freedom of Speech and Assembly concerning religious matters;

3. Whether the students have a free exercise of religious rights regarding Speech and Assembly;

4. Whether the School may defend its policies by referring to the Establishment Clause of the First Amendment of the United States Constitution.

55. This class action is maintainable under Rule 23 (b) 1, because separate actions by individual students seeking to engage in voluntary religious activity could establish incompatible standards of conduct for the school, and could be dispositive of the interests of similarly situated students not parties to the case.

56. This class action is maintainable under Rule 23 (b) 2, because the school policies against voluntary religious activity is based on grounds generally applicable to the entire class and the requested relief is appropriate with respect to the class as a whole.

CLAIMS FOR RELIEF

57. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that the following relief be granted.

A. That the Court declare that the actions of defendants, in denying the recognition and permission for plaintiff students to meet in the group "Petros", is contrary to the First and Fourteenth Amendment to the Constitution of the United States, and contrary to Article I Sections 3 and 7 of the Constitution of the Commonwealth of Pennsylvania.

B. That the Court permanently enjoin defendants from denying to Plaintiffs recognition and permission to enact [sic] as a student club based on the religious content of their proposed meetings.

C. That the Court issue a permanent injunction requiring defendants to allow plaintiffs to meet on the same

terms as other student clubs, with a faculty advisor to be present at meetings solely for purposes of ensuring good order and not for any purpose related to the religious content of the meetings.

D. That the Court allow the Plaintiffs their costs therein and reasonable attorneys fees pursuant to 42 U.S.C. § 1988.

E. That the Court grant such other relief as in the interests of justice and equity may be required.

Respectfully Submitted,

WILLIAMS and SEEVERS

By /s/ Gerald W. Seevers
GERALD W. SEEVERS
Attorney for Plaintiffs
57 E. Fourth St. P.O. Box 3
Williamsport, PA 17703-0003
(717) 323-8568

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

ANSWER OF DEFENDANTS THE WILLIAMSPORT AREA SCHOOL DISTRICT, ET AL TO PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. It is admitted that the Complaint as filed purports to be an action for declaratory judgment and permanent injunction, brought by students of the Williamsport High School, through the parents of those students who are minors, and on behalf of all others similarly situated against the said named defendants. Plaintiffs' right to recover under any such cause of action is, however, specifically denied.

2. Admitted, but Plaintiffs' right to recover against Defendants is denied.

3. Admitted, but Plaintiffs' right to recover against said Defendants is denied.

4. Admitted in part and denied in part. It is admitted that Plaintiff Lisa Bender was enrolled in the twelfth grade at the Williamsport Area High School on the date of filing of the Complaint. It is denied, however, that she is currently enrolled in the twelfth grade or any grade whatsoever at the Williamsport Area High School. For further answer, see the affirmative defenses contained herein.

5. Admitted in part and denied in part. It is admitted that Plaintiff Morris Braggs was enrolled in the twelfth grade at the Williamsport Area High School on the date of filing of the Complaint. It is denied, however, that he is currently enrolled in the twelfth grade or any grade whatsoever at the Williamsport Area High School. For

further answer, see the affirmative defenses contained herein.

6. Admitted in part and denied in part. It is admitted that Plaintiff Tony Robb was enrolled in the twelfth grade at the Williamsport Area High School on the date of filing of the Complaint. It is denied, however, that he is currently enrolled in the twelfth grade or any grade whatsoever at the Williamsport Area High School. For further answer, see the affirmative defenses contained herein.

7. Admitted in part and denied in part. It is admitted that Plaintiff Robin Kriner was enrolled in the twelfth grade at the Williamsport Area High School on the date of filing of the Complaint. It is denied, however, that she is currently enrolled in the twelfth grade or any grade whatsoever at the Williamport Area High School. For further answer, see the affirmative defenses contained herein.

8. Admitted in part and denied in part. It is admitted that Plaintiff Kerri Hunter was enrolled in the twelfth grade at the Williamsport Area High School on the date of filing of the Complaint. It is denied, however, that she is currently enrolled in the twelfth grade or any grade whatsoever at the Williamsport Area High School. For further answer, see the affirmative defenses contained herein.

9. Admitted in part and denied in part. It is admitted that Plaintiff Brenda Kay Herzog was enrolled in the twelfth grade at the Williamsport Area High School on the date of filing of the Complaint. It is denied, however, that she is currently enrolled in the twelfth grade or any grade whatsoever at the Williamsport Area High School. For further answer, see the affirmative defenses contained herein.

10. Admitted, but Plaintiffs' right to recover against said Defendants is denied.

11. Admitted, but Plaintiffs' right to recover against said Defendants is denied.

12. Admitted, but Plaintiffs' right to recover against said Defendants is denied.

13. Admitted, but Plaintiffs' right to recover against said Defendants is denied.

14. Admitted, but Plaintiffs' right to recover against said Defendants is denied.

15. Admitted, but Plaintiff's right to recover against said Defendant is denied.

16. Admitted, but Plaintiffs' right to recover against said Defendant is denied.

17. Admitted, but Plaintiffs' right to recover against said Defendant is denied.

18. Admitted, but Plaintiffs' right to recover against said Defendant is denied. Furthermore, said individual's name is G. Kent Bittner.

19. Admitted, but Plaintiffs' right to recover against said Defendant is denied.

20. Admitted, but Plaintiffs' right to recover against said Defendant is denied.

21. Admitted, but Plaintiffs' right to recover against said Defendant is denied.

22. Admitted, but Plaintiffs' right to recover against said Defendant is denied.

23. Admitted, but Plaintiffs' right to recover against said Defendant is denied.

24. Admitted, but Plaintiffs' right to recover against said Defendant is denied.

25. Admitted, but Plaintiffs' right to recover against said Defendant is denied.

26. Admitted in part and denied in part. It is admitted that the Williamsport Area High School and the School District of which it is a part does permit, under certain circumstances, students to join and participate in groups called student clubs. The said Williamsport Area High School does not permit, however, students to join in and participate in clubs which are unlawful, unconstitutional or otherwise deemed inappropriate as school sponsored activities for its students.

27. Admitted in part and denied in part. Members of the student government are elected, members of the Peer Helpers are selected; all student organizations are lawful, constitutional and deemed appropriate as school sponsored activities.

28. Admitted in part and denied in part. Student clubs do meet during regularly scheduled school periods as part of the school day.

29. Admitted in part and denied in part. Student clubs do meet before and after class periods but during the school day and on school property.

30. Denied as stated. This averment is broad, ambiguous and vague and Defendants' response thereto may not coincide with the meaning attached by the Plaintiffs to the terms used in the averment. By way of further answer, all school clubs or organizations must be lawful, constitutional and deemed appropriate as school sponsored activities.

31. Denied as stated. The averment of this paragraph apparently refers to one or more oral, as opposed to written communications, which communications were made by unnamed individuals; furthermore, it is not known whether Plaintiffs intend this averment to be a quotation as to the request or requests made; for this and the above reasons, the averments of this paragraph are denied as stated.

32. Admitted in part and denied in part. It is admitted that the said Wayne E. Newton, Principal of the Williamsport Area High School and the said Oscar Knade, Superintendent of the Williamsport Area School District refused to recognize "Petros" as a sponsored school activity or organization. It is specifically denied that the said Defendants or any Defendant denied to the "Petros" group the opportunity to meet outside school hours and outside school property and facilities. The specific reason why the group known as "Petros" was denied this recognition and opportunity is that to permit same would be unlawful and unconstitutional and same was made known to the Defendants mentioned herein and to all of the Defendants by its solicitor and legal counsel.

33. Admitted. By way of further answer, reference is made to the January 2, 1982 letter of Lisa Bender, one of the Plaintiffs herein, to Richard F. Eberhart, one of the Defendants herein, which letter is attached hereto as Exhibit "A". By way of further answer, the request was denied for the reasons set forth in the letter of Richard F. Eberhart dated January 21, 1982, attached hereto as Exhibit "B".

34. This averment states a conclusion of law, to which no answer is required. Without waiving the foregoing, the Defendants state as follows: It is specifically denied that the denial by Defendants of Plaintiffs' request for recognition and permission to meet on the grounds of religious content of the proposed meetings violates the rights of Plaintiffs under the First Amendment of the Constitution of the United States, to exercise freedom of speech without regulation or restriction by the State imposed on the content of that speech. Specific proof to the contrary is demanded at trial.

COUNT II

35. Defendants incorporate by reference its answers to paragraph 1-34 above.

36. It is specifically denied that Defendants have discriminated based upon the content of speech or based upon any grounds whatsoever and it is further denied that Plaintiffs have suffered a violation of their civil rights under 42 U.S.C. Section 1983 or under any statutory or case law. Specific proof to the contrary is demanded at trial.

COUNT III

37. Defendants incorporate by reference its answers to paragraphs 1-36 above.

38. It is specifically denied that Defendants have conspired among themselves to perform the actions alleged in Plaintiffs' Complaint, including to violate the civil rights of the Plaintiffs. By way of further answer, any action or response made by the Defendants to the requests of Plaintiffs was proper, lawful and constitutional and could not, therefore, be the subject of a conspiracy. Specific proof to the contrary is demanded at trial.

COUNT IV

39. Defendants incorporate by reference its answers to paragraphs 1-38 above.

40. Defendants are without sufficient knowledge or information so as to form a belief as to the truth of this averment and it is therefore specifically denied and proof thereof is demanded at trial. Without waiving the foregoing, it is respectfully submitted that Plaintiffs' religious beliefs, as appropriate as they may be, do not give them the right to force the Defendants to sanction and authorize unlawful and unconstitutional use of school time and school facilities.

41. Denied as stated. For further answer, see paragraph 26 above.

42. This averment states a conclusion of law to which no answer is required. Without waiving the foregoing,

the Defendants state as follows: It is specifically denied that Defendants' actions in this case violate the rights of Plaintiffs to the free exercise of their religious beliefs under the First Amendment of the Constitution of the United States or that said actions constitute a failure to give reasonable accommodation to religious beliefs of the Plaintiffs. Plaintiffs may exercise whatever religious beliefs they choose, as guaranteed by the Constitution of the United States and the Constitution of the Commonwealth of Pennsylvania, but may not under existing law utilize the public school facilities herein to foster, sanction or officially recognize their religious beliefs and convictions. Specific proof to the contrary is demanded at trial.

COUNT V

43. Defendants incorporate by reference its answers to paragraphs 1-42 above.

44. This averment states a conclusion of law to which no answer is required. Without waiving the foregoing, the Defendants state as follows: It is specifically denied that the above alleged actions of the Defendants or any actions of the Defendants whatsoever violate the rights of the Plaintiffs to the equal protection of law under the Fourteenth Amendment of the Constitution of the United States. Specific proof to the contrary is demanded at trial.

COUNT VI

45. Defendants incorporate by reference its answers to paragraphs 1-44 above.

46. This averment states a conclusion of law to which no answer is required. Without waiving the foregoing, the Defendants state as follows: It is specifically denied that the above alleged actions of the Defendants or any actions of the Defendants whatsoever violate the prohibition of the Establishment Clause of the First Amendment of the Constitution of the United States against

state hostility against religion. Specific proof to the contrary is demanded at trial.

COUNT VII

47. Defendants incorporate by reference its answers to paragraphs 1-46 above.

48. This averment states a conclusion of law to which no answer is required. Without waiving the foregoing, the Defendants state as follows: It is specifically denied that the above alleged actions by Defendants or any actions by the Defendants whatsoever violate Article I, Sections 3 and 7 of the Constitution of the Commonwealth of Pennsylvania. Specific proof to the contrary is demanded at trial.

CLASS ACTION ALLEGATIONS

49. Defendants incorporate by reference its answers to paragraphs 1-48 above.

50. It is specifically denied that this suit is maintainable as a class action under the Federal Rules of Civil Procedure 23(a) and 23(b)(1) and (2). Specific proof to the contrary is demanded.

51. Defendant is without sufficient knowledge or information so as to form a belief as to the number of individuals who might belong to the "class" which Plaintiffs allege, and said averment is therefore specifically denied and proof thereof is demanded at trial.

52. Defendants are without sufficient knowledge or information so as to form a belief as to the number of individuals who might belong to the "class" which Plaintiffs allege, and said averment is therefore specifically denied and proof thereof is demanded at trial.

53. Specifically denied. Proof thereof is demanded.

54. It is specifically denied that the class consists of the members alleged by Plaintiffs and it is further spe-

cifically denied that said members, whatever their number, have in common the suggested questions of law and fact. Specific proof is demanded.

55. It is specifically denied that this class action is maintainable under Rule 23(b)(1) for the reasons set forth, or for any reason whatever. Specific proof is demanded.

56. It is specifically denied that the class action is maintainable under Rule 23(b)(2) for the reasons set forth or for any reason whatsoever. Specific proof is demanded.

57. This averment states a conclusion of law to which no answer is required.

WHEREFORE, Defendants pray your Honorable Court that Plaintiffs' claims for relief be denied, that their Complaint be dismissed for failure to state a cause of action and, further, that the Court find:

A. That the actions of Defendants denying recognition and permission for Plaintiff students to meet during school hours and on school property in the group "Petros" is not only consistent with the First and Fourteenth Amendments of the Constitution of the United States, but is required by same and further, is not contrary to Article I, Sections 3 and 7 of the Constitution of the Commonwealth of Pennsylvania, but is required by same.

B. That it will refuse to permanently or temporarily enjoin Defendants from denying Plaintiffs recognition and permission to function as a student club based on the religious content of their proposed meetings.

C. That it will refuse to issue a permanent injunction requiring the Defendants to allow the Plaintiffs to meet on the same terms as other student groups, with a faculty advisor to be present at the meetings solely for the purposes of procuring good order and not for any purpose related to the religious content of the meetings.

D. That it will refuse the Plaintiffs their costs therein and refuse the Plaintiffs' reasonable attorneys' fees pursuant to 42 U.S.C. Section 1988.

E. That it will indeed grant such other relief as in the interest of justice and equity may require.

WHEREFORE, Defendants demand that judgment be entered in their favor and against Plaintiffs, together with the costs and expenses of this action.

By way of further answer, the Defendants aver as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a single claim or cause of action against the Defendants upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over the claims alleged by Plaintiffs in their Complaint and further lacks both subject matter and in personam jurisdiction.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs are estopped from raising the claims alleged in their Complaint.

FOURTH AFFIRMATIVE DEFENSE

None of the Plaintiffs Federal or state Constitutional rights have been violated by the Defendants and, on the contrary, Defendants made the only decision with respect to the request of the Plaintiffs which could properly be made given the current case law and constitutional interpretations by the courts of the land.

FIFTH AFFIRMATIVE DEFENSE

Any action, decision or response made by the Defendants to the requests of Plaintiffs was proper, lawful and

constitutional and cannot, therefore, be the subject of a conspiracy.

SIXTH AFFIRMATIVE DEFENSE

The Defendants acted in good faith, with honest intention and exercised their best professional judgment based upon direct advice of the school district solicitor and legal counsel. Defendants are immune from liability under The Civil Rights Act, 42 U.S.C. Section 1983, et. seq.

SEVENTH AFFIRMATIVE DEFENSE

Defendant John C. Youngman, Jr. did not attend the school board meeting of January 18, 1982 and therefore did not vote or participate in the decision making process with respect to the question of recognition or nonrecognition of the group "Peters".

EIGHTH AFFIRMATIVE DEFENSE

The First Amendment of the United States Constitution provides in pertinent part that "Congress shall make no law affecting an established religion. . . ." The Establishment Clause and the case law interpreting same preclude use of school time and school facilities for the purposes requested by the Plaintiffs herein.

NINTH AFFIRMATIVE DEFENSE

The First Amendment to the United States Constitution insofar as it contains the guarantees of freedom of speech is not absolute, but is subject to the limitations imposed by the Establishment Clause of said Amendment.

TENTH AFFIRMATIVE DEFENSE

The First Amendment to the United States Constitution insofar as it contains the free exercise of religious clause is not absolute but is subject to the limitations imposed by the Establishment Clause.

ELEVENTH AFFIRMATIVE DEFENSE

There has been no denial of the Plaintiffs' equal protection under law in that all religious groups are equally denied access to and official recognition by public school facilities under the current constitutional law as promulgated by the courts of the land.

TWELFTH AFFIRMATIVE DEFENSE

Shortly after the Defendants received the request from the Plaintiffs to officially recognize as a school sponsored activity the group known as "Petros", said Defendants requested and received in writing an opinion from the school district solicitor and legal counsel that it would be unlawful, improper and unconstitutional to recognize said group as a student organization and that if said organization was so required, the Defendants, including the school district and the Board of Directors, would be susceptible to lawsuits brought against it and them by organizations, entities and individuals who would justifiably claim that the school district was acting in an unlawful, improper and unconstitutional manner.

THIRTEENTH AFFIRMATIVE DEFENSE

The purpose of the group "Petros" is religious and non-secular in nature; the effect of its recognition as a school sponsored organization would be to foster, advance or encourage religious activity; an additional effect of its recognition would be to create an unlawful and excessive entanglement between religion and the state, in violation of the Constitution and laws of the United States.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs Lisa Bender, Morris Braggs, Tony Robb, Robin Kriner, Kerri Hunter and Brenda Kay Herzog have all graduated from Williamsport Area High School,

are no longer students within the Williamsport Area School District and have no standing to maintain this action on their own behalf or on behalf of others.

FIFTEENTH AFFIRMATIVE DEFENSE

Recognition of the group "Petros" as an official school activity would have had the consequence of having the Williamsport Area School District impermissibly place its approval upon religious activities, all of which is precluded by the United States Constitution. This is true whether or not the group is nondenominational and whether or not it is voluntary.

WHEREFORE, the Defendants demand that judgment be entered in their favor and against Plaintiffs, together with the costs and expenses of this action.

Respectfully submitted,

By _____

NATHAN W. STUART, ESQUIRE
Counsel for Defendants
17 West Fourth Street
Williamsport, PA 17701
(717) 326-9118
McCORMICK, REEDER, NICHOLS,
SARNO, BAHL & KNECHT

By _____

DAVIL R. BAHL, ESQUIRE
Co-counsel for Defendants
835 West Fourth Street
Williamsport, PA 17701
(717) 326-5131

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

MOTION OF DEFENDANTS THE WILLIAMSPORT AREA SCHOOL DISTRICT, ET AL FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and the Rules of the Middle District, the Defendants Williamsport Area School District, et al, by their attorneys, hereby move your Honorable Court for summary judgment with respect to all causes of action alleged by all Plaintiffs against all Defendants.

Pursuant to Rule 401.4 of the Middle District, Defendants Williamsport Area School District, et al attach a statement of the facts material to this motion which they contend are not in dispute.

The facts and legal authority supporting this motion are fully set forth in the Affidavit of Oscar W. Knade, Jr., attached to this motion, in the pleadings previously filed herein and in the Brief in Support of Motion for Summary Judgment which is filed herewith.

Respectfully submitted,

By _____

NATHAN W. STUART, ESQUIRE
Counsel for Defendants
17 West Fourth Street
Williamsport, PA 17701
(717) 326-9118

MCCORMICK, REEDER, NICHOLS,
SARNO, BAHL & KNECHT

By /s/ David R. Bahl
DAVID R. BAHL, ESQUIRE
Co-counsel for Defendants
835 West Fourth Street
Williamsport, PA 17701
(717) 326-5131

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

1. On October 1, 1981, Morris R. Braggs, one of the Plaintiffs herein, addressed a letter to the Superintendent of the Williamsport Area School District. The content of that letter, which is attached as Exhibit One to the Affidavit of Oscar W. Knade, Jr., is a material fact not in dispute.

2. On October 2, 1981, Oscar W. Knade, Jr., one of the Defendants herein, addressed a letter to Morris R. Braggs. The content of that letter, which is attached as Exhibit Two to the Affidavit of Oscar W. Knade, Jr., is a material fact not in dispute.

3. On October 23, 1981, Morris R. Braggs and Lisa Bender, two of the Plaintiffs herein, addressed a letter and accompanying proposal to Oscar W. Knade, Jr., one of the Defendants herein. The content of that letter and proposal which are attached as Exhibit Three to the Affidavit of Oscar W. Knade, Jr., is a material fact not in dispute.

4. On January 2, 1982, Lisa Bender, one of the Plaintiffs herein, addressed a letter to Richard F. Eberhart, one of the Defendants herein. The content of that letter, which is attached as Exhibit Four to the Affidavit of Oscar W. Knade, Jr., is a material fact not in dispute.

5. On January 21, 1982, Richard F. Eberhart, one of the Defendants herein, addressed a letter to Lisa Bender,

one of the Plaintiffs herein. The content of that letter, which is attached as Exhibit Five to the Affidavit of Oscar W. Knade, Jr., is a material fact not in dispute.

Respectfully submitted,

By:

NATHAN W. STUART, ESQUIRE
Counsel for Defendants
17 West Fourth Street
Williamsport, PA 17701
(717) 326-9118

McCORMICK, REEDER, NICHOLS,
SARNO, BAHL & KNECHT

By:

DAVID R. BAHL, ESQUIRE
Co-counsel for Defendants
835 West Fourth Street
Williamsport, PA 17701
(717) 326-5131

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

COMMONWEALTH OF PENNSYLVANIA)
) ss
COUNTY OF LYCOMING)

AFFIDAVIT OF OSCAR W. KNADE, JR.

OSCAR W. KNADE, JR., being duly sworn according to law, deposes and says:

1. I am a defendant in the above action. I am familiar with the allegations made by Plaintiffs and with the facts pertaining to those allegations as set forth herein. The statements set forth in this Affidavit are based on my personal knowledge.

2. At all times relevant to the causes of action alleged in Plaintiffs' Complaint, I held the position of Superintendent of Schools in the Williamsport Area School District.

3. In September of 1981, representatives of the Plaintiffs, including Lisa Bender, met first with Wayne Newton, Principal of the Williamsport Area High School and later with Mr. Newton and with myself. During these meetings, the representatives asked for permission to form an organization to meet at school during school hours to read and conduct discussions on the Bible and to pray.

4. Attached hereto as Exhibit One is an October 1, 1981 letter of Morris R. Braggs, one of the Plaintiffs herein, signed by him and various other individuals. The letter requests, *inter alia*, the "establishment of a prayer meeting at W.A.H.S." which is described as a "Prayer Club", a "non-denominational group". The letter requests "some place in the school where we can meet and read some scriptures and pray to God that he might edify our minds."

5. Attached hereto as Exhibit Two is an October 21, 1981 letter from me to Plaintiff Braggs which is self-explanatory. The letter requests additional information and also questions the legality of the endorsement of such activities on school premises. Reference is made to an intention to seek a formal legal opinion. In the meantime, approval for meetings of the "Prayer Club" was withheld.

6. On or about October 21, 1981, I requested in writing of the school district solicitor that he offer me in writing his opinion concerning the legality of permitting such an activity and organization on school premises.

7. Attached hereto as Exhibit Three is an October 23, 1981 letter of Morris Braggs and Lisa Bender, two of the Plaintiffs herein, which has attached to it a document entitled "Proposal for a New Student Organization". The proposal provides that the organization will be a "non-denominational prayer fellowship", have as its purpose to "promote spiritual growth", will have regular meetings "on school premises during the Tuesday and Thursday morning activity periods" and will "include Scripture reading, discussion, prayer and other activities. . . ." It further proposes that "the organization will be supervised by a faculty advisor."

8. On or about October 30, 1981, I received the written opinion of the school district solicitor. Said opinion provided that the request in question must be denied because the activity proposed would violate the First Amendment to the United States Constitution if permitted by the school district.

9. On November 16, 1981, Mr. Newton and myself met at the Williamsport Area High School with six or seven representatives of the Plaintiffs' group, including Plaintiff herein, Lisa Bender. We reviewed with the students the solicitor's legal opinion and explained why the request must be denied. We then discussed an alternative where the Prayer Club would meet off school prop-

erty. We indicated that if the students secured a location and adult sponsor, preferably a clergyman, we would permit the students released time during school activity periods. The students said they would explore this suggested alternative.

10. Attached hereto as Exhibit Four is a January 2, 1982 letter of Lisa Bender, one of the Plaintiffs herein, to Richard F. Eberhart, who is President of the Williamsport Area School Board. The letter refers to the previous letter and proposal of October 23, 1981 (Exhibit Three hereto) and requests the proposal be placed before the School Board.

11. Attached hereto as Exhibit Five is a January 21, 1982 letter of Richard F. Eberhart. The letter is self-explanatory and sets forth the reasons for the Board's decision to affirm the previous decision of the Superintendent.

12. Plaintiffs Lisa Bender, Morris Braggs, Tony Robb, Robin Kriner, Kerri Hunter and Brenda Kay Herzog all graduated from the Williamsport Area High School on June 3, 1982 and are no longer students within the Williamsport Area School District.

Respectfully submitted,

/s/ Oscar W. Knade, Jr.
OSCAR W. KNADE, JR.

Sworn to and subscribed before me this 16th day of July, 1982.

/s/ John E. Wollett
JOHN E. WOLLETT
Notary Public
Williamsport, Lycoming Co., Pa.
My Commission Expires
August 27, 1983

513 Park Avenue
Williamsport, PA 17701
October 1, 1981

Superintendent
Williamsport Area School District
605 West Fourth Street
Williamsport, PA 17701

Dear Sir:

On behalf of the Prayer Club, I am writing you this letter concerning the establishment of a prayer meeting at Williamsport Area High School.

You must already know the situation and the atmosphere that has been outlined. We know how you feel to make a decision of this type, but we think you are missing the true concept of this prayer meeting. We are not forcing any student to attend these meetings. The meetings are for whom ever desire some need for personal and spiritual growth that they cannot get outside the school due to the availability or what ever the situation is.

This would be a non-denominational group, therefore we are not forcing any docterine [sic] on any student. It is open to any student.

What we want sir, is some place in the school where we can meet and read some scriptures and pray to God that he might edify our minds.

We feel that we are not asking too much, because we as students and American citizens have this basic right.

Sincerely,

/s/ Morris R. Braggs
MORRIS R. BRAGGS

WILLIAMSPORT AREA SCHOOL DISTRICT
605 West Fourth Street
Williamsport, Pennsylvania 17701
(717) 326-3501

October 21, 1981

Mr. Morris R. Braggs
513 Park Avenue
Williamsport, PA 17701

Dear Mr. Braggs:

This is in response to your letter of October 1, 1981, received in this office October 20, 1981, in which you request approval of "establishment of a prayer meeting at Williamsport Area High School."

When the question was first put to me, I asked Mr. Newton to secure from sponsors of the proposed club a detailed description of the activities of the club, including proposed meeting times and locations, likely membership, faculty sponsor and so forth. Until receiving your letter, this information was not available to Mr. Newton or me.

Your letter provides some information, but still lacks some important aspects of your proposed activity (faculty sponsorship, meeting times, likely membership). From the description in your letter of things your group proposes to do, it appears to me that you are proposing to conduct religious services, including prayer and scripture reading.

I believe it would be legally improper for a School District to approve or endorse such an activity on school district premises or on school time. Since I am not an attorney, I will ask the District's solicitor to provide his opinion on the matter at his earliest convenience.

Once I have competent legal advice as to the propriety of approving establishement of the proposed prayer club,

I will discuss it with you and your student colleagues at a mutually convenient time. In the meantime, I must withhold approval for meetings of the Prayer Club at school.

Sincerely,

/s/ Oscar W. Knade, Jr.
OSCAR W. KNADE, JR.
Superintendent

OWK/ms

WILLIAMSPORT AREA SCHOOL DISTRICT
605 West Fourth Street
Williamsport, Pennsylvania 17701
(717) 326-3501

October 21, 1981

Mr. Nathan W. Stuart
161 West Third Street
Williamsport, PA 17701

Dear Nate:

I am enclosing a copy of a letter from Morris Braggs, a student at Williamsport Area High School, requesting approval to establish a prayer group at the school. I have also enclosed a copy of my reply.

I would appreciate your providing me with a written opinion as to the legality of permitting such an activity at the school. All that I know about the group's proposed purposes is what Mr. Braggs describes in his letter. I hope that is sufficient information on which to base an opinion.

Sincerely,

/s/ Oscar
OSCAR W. KNADE
Superintendent

OWK/ms

Enclosures 2

Lisa Bender
R.D.2 Box 33
Linden, PA 17744

October 23, 1981

Dr. Oscar Knade
Williamsport School District
1401 Locust Street
Williamsport, PA 17701

Dear Dr. Knade:

We regret the recent misunderstandings concerning our desire to establish a new student organization at the Williamsport Area High School. Attached is a copy of our proposal for that organization. We would greatly appreciate your assistance in advising us of any further action that should be taken on our part in order that this proposal may be properly evaluated. Thank you.

Sincerely,

/s/ Morris R. Braggs
/s/ Lisa Bender
MORRIS BRAGGS
LISA BENDER

PROPOSAL FOR A NEW STUDENT ORGANIZATION

NAME OF THE ORGANIZATION

πετρα (The Rock)

NATURE OF THE ORGANIZATION

The organization will be a non-denominational prayer fellowship. Participation will be voluntary and open to all students.

PURPOSE OF THE ORGANIZATION

The purpose of the organization will be to promote spiritual growth and positive attitudes in the lives of its members

LEADERSHIP

Selection of leaders will be by democratic election. The leaders will be responsible for directing the meetings and coordinating activities in a manner that will carry out the purpose of the organization.

MEETINGS

Regular meetings of the organization will be held on school premises during the Tuesday and Thursday morning activity periods. They will include Scripture reading, discussion, prayer and other activities which may be of interest to the group.

SUPERVISION

Meetings of the organization will be supervised by a faculty advisor. Student attendance may be verified by the signing of a roster.

Lisa Bender
RD 2 Box 33
Linden, PA 17744

January 2, 1982

Richard F. Eberhart, Chairman
Williamsport School District
4101 Locust Street
Williamsport, PA 17701

Dear Sir:

Enclosed is a copy of a proposal for a new student organization at the Williamsport Area High School. This proposal was submitted to Dr. Oscar Knade on October 23, 1981. On the recommendation of Nathan Stewart, it was rejected. We are dissatisfied with this decision and are therefore requesting that the proposal be brought before the school board for an appeal. Please advise us, at the above address, of what action is being taken concerning this matter. Thank you.

Sincerely,

/s/ Lisa Bender
LISA BENDER

LCB:bjo
Enclosure.

WILLIAMSPORT AREA SCHOOL DISTRICT
605 West Fourth Street
Williamsport, Pennsylvania 17701
(717) 326-3501

January 21, 1982

Miss Lisa Bender
R.D. # 2, Box 33
Linden, Pennsylvania 17744

Dear Miss Bender:

On January 19, 1982, your letter of January 2 was presented to the School Board for discussion. The Board was briefed on the proposal for a student prayer fellowship organization at Williamsport Area High School. The Board was also told of the meeting your group had with Mr. Newton and Dr. Knade explaining why the District administrative staff could not approve the proposed organization.

Since your proposal involves issues concerning the legal concept of separation of church and state, the Board sought the advise [sic] of its solicitor on the matter. The solicitor informed the Board that the formal opinion he submitted to Dr. Knade was still valid and was, in fact, given confirmation by recent decisions of the U.S. Supreme Court. The solicitor advised the Board that to approve your proposal would be in violation of existing case law and therefore, an improper action. The Board decided, therefore, to deny your appeal.

Please be assured that neither the School Board nor the Administration regard the proposed prayer fellowship group as being unworthy. Present law simply does not

permit public schools to authorize or support religious activities on school property.

Sincerely yours,

/s/ Richard F. Eberhart
RICHARD F. EBERHART,
President
Williamsport Area
School Board

RFE:w
cc. Dr. Knade
Mr. Newton
Mr. Stuart

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

MOTION OF PLAINTIFFS' LISA BENDER ET. AL. FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the Rules of the Middle District, the Plaintiffs' Lisa Bender, et al., by their attorneys, hereby move your Honorable Court for summary judgment with respect to all causes of action alleged by all Plaintiffs against all Defendants.

Pursuant to Rule 401.4 of the Middle District, Plaintiffs Lisa Bender, et al. attach a statement of the facts material to this motion which they contend are not in dispute.

The facts and legal authority supporting this motion are fully set forth in the Affidavit of Morris Braggs and Lisa Bender, attached to this motion, in the pleadings previously filed herein in the transcript of Depositions of Mr. Newton and Dr. Knade, and in the Brief in Support of Motion for Summary Judgment which is filed herewith.

Respectfully Submitted,

WILLIAMS AND SEEVERS

By: /s/ Gerald W. Seevers
GERALD W. SEEVERS
Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

1. In early September, 1981, representatives of the Plaintiffs, including Lisa Bender, Morris Braggs, and Kerri Hunter, met with Wayne Newton, Principal of the Williamsport Area School District and requested permission to begin meeting with other students.

2. Mr. Newton granted the students permission to meet during the first regularly scheduled activity period following the discussion. At the first meeting, approximately 45 students attended to read scripture and pray.

3. After their first initial meeting, the students were informed by Mr. Newton that he would have to discuss their club with the Superintendent of Williamsport Area Schools.

4. On October 1, 1981, Morris Braggs, with signatures of most of the other 44 students, sent a letter to the Superintendent addressing their desire to form a voluntary non-denominational group for "personal and spiritual growth".

5. On October 21, 1981, Oscar W. Knade, Jr., Superintendent of the Williamsport Area School's, sent a response to Morris Braggs in which he informed the students that he personally "believed that it would be legally improper for the School District to approve or endorse this activity on school premises or on school time". He also informed them that he "would seek the opinion of the School District Solicitor".

6. On October 23, 1981, Morris Braggs and Lisa Bender, on behalf of themselves and other interested students, sent another letter to Dr. Knade, in which they

enclosed a copy of their proposal for their voluntary organization.

7. On November 16, 1981, Mr. Newton and Dr. Knade met with representatives of the Plaintiffs' group at the Williamsport Area High School, at which time they advised the students that their request to form the club was denied because the speech and activity in which they desired to engage was religious in content. . .

8. On January 2, 1982, Lisa Bender, on behalf of herself and the other students, including the Plaintiffs herein, sent a letter to Richard F. Eberhart, Chairman of the Williamsport Area School Board appealing the decision of the superintendent of schools and requesting the School Board to approve their new club.

9. At their regularly scheduled meeting on January 19, 1982, the School Board affirmed the action of the Superintendent and denied the appeal of the students desiring to form this group.

10. On January 21, 1982, Richard F. Eberhart, President of the Williamsport Area School Board formally notified Lisa Bender and the other students by letter that they were affirming the decision of Mr. Newton and Dr. Knade in denying the students' appeal.

11. All of the Plaintiffs were students of the Williamsport Area School District at the time of these actions including the date of the filing of the Complaint.

WILLIAMS AND SEEVERS

By: /s/ Gerald W. Seevers
GERALD W. SEEVERS, ESQUIRE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

STATE OF MICHIGAN)
) ss
COUNTY OF)

AFFIDAVIT OF LISA BENDER

LISA BENDER, being duly sworn according to law, deposes and says:

1. I am a plaintiff in the above action. I am familiar with the allegations and the facts pertaining to those allegations as set forth herein. The statements set forth in this affidavit are based on my personal knowledge.

2. At all times relevant to the alleged causes of action, I was a student in the Williamsport Area School District.

3. In September, 1981, myself and other plaintiffs met with Mr. Wayne Newton, Principal of the Williamsport Area School District. At this meeting, we requested permission to form a club to hold meetings during the regularly scheduled activity period, at which time there would be prayer and Bible reading. Mr. Newton told us to go ahead and meet because other students had done so in previous years and he did not believe that there would be any problems. He did, however, inform us that we could not advertise our meetings either by announcing or by posting announcements on bulletin boards.

4. On the following Tuesday, approximately 45 students were in attendance and we met in the school cafeteria at which time a passage of scripture was read and students who wished, prayed. At this meeting a teacher, functioning as a monitor, was present, but did not in any way participate in the activity.

5. On the next Thursday, these same students returned to the cafeteria for our second meeting. However, we were informed by Morris Braggs that Mr. Newton had informed him earlier in the morning that because of the number of students, he would have to obtain approval from the School Administration. Until such time, we were not to have any further meetings.

6. On October 1, 1981, Morris Braggs, with signatures of most of the 44 other students, sent a letter to the superintendent of the Williamsport Area School District requesting his permission to meet as a voluntary non-denominational group for the purpose of "personal and spiritual growth". See Exhibit 1, attached hereto and made a part hereof.

7. On October 21, 1981, Morris Braggs received a letter from Dr. Oscar W. Knade, Jr., Superintendent of the Williamsport Area School District advising us that he personally believed "that it would be legally improper for the School District to approve or endorse such an activity on School District premises or on school time". He advised us that he was seeking a legal opinion from the School District Solicitor. See Exhibit 2, attached hereto and made a part hereof. Morris Braggs and myself sent an additional letter to the Superintendent, with a formal proposal setting forth the name, nature, purpose, and organization of our proposed student organization. See Exhibit 3, attached hereto and made a part hereof.

8. On November 16, 1981, representatives of the group, including most of the Plaintiffs herein, met with Mr. Newton the school principal, and Dr. Knade, the Superintendent, at which time we were advised that our request must be denied because the speech and the activities were religious in content.

9. On January 2, 1982, I, sent a letter to Richard F. Eberhart, President of the Williamsport Area School Board, appealing the decision of the Superintendent of

Schools, and requesting the School Board grant permission for the new club to meet. See Exhibit 4, attached hereto and made a part hereof.

10. On January 21, 1982, I received a letter from Robert F. Eberhart, President of the Williamsport Area School Board, in which he informed us that the School Board had affirmed the decision of the Superintendent of Schools and that our appeal was denied. See Exhibit 5, attached hereto, and made a part hereof.

Respectfully Submitted,

/s/ Lisa Bender
LISA BENDER

Sworn to and subscribed
before me this 30
day of August, 1982.

/s/ Connie A. Brisboe
CONNIE A. BRISBOE
Notary Public

Superintendent
Williamsport Area School District
605 West Fourth Street
Williamsport, PA 17701

Dear Sir:

On behalf of the Prayer Club, I am writing you this letter concerning the establishment of a prayer meeting at Williamsport Area High School.

You must already know the situation and the atmosphere that has been outlined. We know how you feel to make a decision of this type, but we think you are missing the true concept of this prayer meeting. We are not forcing any student to attend these meetings. The meetings are for whom ever desire some need for personal and spiritual growth that they cannot get outside the school due to the availability or what ever the situation is.

This would be a non-denominational group, therefore we are not forcing any docterine on any student. It is open to any student.

What we want sir, is some place in the school where we can meet and read some scriptures and pray to God that he might edify our minds.

We feel that we are not asking too much, because we as students and American citizens have this basic right.

Sincerely,

/s/ Morris R. Braggs
MORRIS R. BRAGGS

WILLIAMSPORT AREA SCHOOL DISTRICT
605 West Fourth Avenue
Williamsport, Pennsylvania 17701
(717) 326-3501

October 21, 1981

Mr. Morris R. Braggs
513 Park Avenue
Williamsport, PA 17701

Dear Mr. Braggs:

This is in response to your letter of October 1, 1981, received in this office October 20, 1981, in which you request approval of "establishment of a prayer meeting at Williamsport Area High School."

When the question was first put to me, I asked Mr. Newton to secure from sponsors of the proposed club a detailed description of the activities of the club, including proposed meeting times and locations, likely membership, faculty sponsor and so forth. Until receiving your letter, this information was not available to Mr. Newton or me.

Your letter provides some information, but still lacks some important aspects of your proposed activity (faculty sponsorship, meeting times, likely membership). From the description in your letter of things your group proposes to do, it appears to me that you are proposing to conduct religious services, including prayer and scripture reading.

I believe it would be legally improper for a School District to approve or endorse such an activity on school district premises or on school time. Since I am not an attorney, I will ask the District's solicitor to provide his opinion on the matter at his earliest convenience.

Once I have competent legal advice as to the propriety of approving establishment of the proposed prayer club,

I will discuss it with you and your student colleagues at a mutually convenient time. In the meantime, I must withhold approval for meetings of the Prayer Club at school.

Sincerely,

/s/ Oscar Knade
OSCAR W. KNADE, JR.
Superintendent

WILLIAMSPORT AREA SCHOOL DISTRICT
605 West Fourth Street
Williamsport, Pennsylvania 17701
(717) 326-3501

October 21, 1981

Mr. Nathan W. Stuart
161 West Third Street
Williamsport, PA 17701

Dear Nate:

I am enclosing a copy of a letter from Morris Braggs, a student at Williamsport Area High School, requesting approval to establish a prayer group at the school. I have also enclosed a copy of my reply.

I would appreciate your providing me with a written opinion as to the legality of permitting such an activity at the school. All that I know about the group's proposed purposes is what Mr. Braggs describes in his letter. I hope that is sufficient information on which to base an opinion.

Sincerely,

/s/ Oscar
OSCAR W. KNADE
Superintendent

OWK/ms

Enclosures 2

Lisa Bender
R.D. 2 Box 33
Linden, PA 17744

October 23, 1981

Dr. Oscar Knade
Williamsport School District
1401 Locust Street
Williamsport, PA 17701

Dear Dr. Knade:

We regret the recent misunderstandings concerning our desire to establish a new student organization at the Williamsport Area High School. Attached is a copy of our proposal for that organization. We would greatly appreciate your assistance in advising us of any further action that should be taken on our part in order that this proposal may be properly evaluated. Thank you.

Sincerely,

/s/ Morris R. Braggs
/s/ Lisa Bender
MORRIS BRAGGS
LISA BENDER

Lisa Bender
RD 2 Box 33
Linden, PA 17744

January 2, 1982

Richard F. Eberhart, Chairman
Williamsport School District
4101 Locust Street
Williamsport, PA 17701

Dear Sir:

Enclosed is a copy of a proposal for a new student organization at the Williamsport Area High School. This proposal was submitted to Dr. Oscar Knade on October 23, 1981. On the recommendation of Nathan Stewart, it was rejected. We are dissatisfied with this decision and are therefore requesting that the proposal be brought before the school board for an appeal. Please advise us, at the above address, of what action is being taken concerning this matter. Thank you.

Sincerely,

/s/ Lisa Bender
LISA BENDER

LAB:bjo
Enclosure.

[See pages 48 & 49 for reproduction of letter attached as Exhibit 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

DEPOSITION OF WAYNE A. NEWTON AND OSCAR KNADE

[2]

Taken by: Plaintiffs

Before: SHELLY L. HAMPTON, Reporter Notary Public

Date: August 24, 1982, 9:30 A.M.

Place: WILLIAMS and SEEVERS, 57 East Fourth Street, Williamsport, Pa. 17701

Appearances:

WILLIAMS AND SEEVERS

By: GERALD W. SEEVERS, ESQUIRE
For—Plaintiffs

MCCORMICK, REEDER, NICHOLS, SARNO, BAHL & KNECT

By: DAVID R. BAHL, ESQUIRE
For—Defendants

LAW FIRM OF NATHAN W. STUART, ESQUIRE

By: NATHAN W. STUART, ESQUIRE
For—Defendants

[3] STIPULATION

It is hereby stipulated by and between counsel for the respective parties that reading, signing, sealing, certification and filing are waived; and that all objections except as to the form of the question are reserved to the time of trial.

WAYNE A. NEWTON, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SEEVERS:

Q Mr. Newton, my name is Gerald Seevers and I'm the attorney for the students. I'm going to ask you a series of question, at least 80 of them, I have them all written out. I would just say, if you do not understand any of my questions, I will be glad to rephrase them. I will assume that if you do not ask me to rephrase them that you understand and I will consider your answer accordingly.

Will you state your full name, please?

A Wayne Newton.

Q What is your occupation?

A Principal of the Williamsport Area High School.

Q How long have you been principal?

A Since 1974.

Q How many students are in Williamsport Area High School?

A This coming year approximately 2480.

[4] Q How many teachers are in the high school?

A 157.

Q Do you have teaching aides beyond that number?

A We have in the neighborhood of about eight aides working in various areas of the building.

Q From what areas do the students come to the high school, what political subdivisions?

A The Williamsport School District consists of the City of Williamsport, as far west as Woodward Township and as far north as Lewis Township or Bedines, Trout Run, Hepburnville, that area.

Q What is the policy of the Williamsport School District regarding student clubs and student meetings on public school grounds?

A Policy has be that any group of students that wishes a meeting within the confines of the building must meet with a faculty advisor. They must have the activity approved by the administration and they are permitted to meet during the activities period if it's a group of people that are approved by the school.

Q Is this policy written in formal?

A I can't honestly answer that. This is a policy that was passed on to me by the former principal verbally.

Q Do you know under what circumstances that policy is formulated?

[5] A It was formulated before I came to Williamsport.

Q How much discretion does the policy give the school principal to grant or deny access to school facilities for student clubs?

MR. BAHL.: Could you clarify that question, discretion with respect to what? Are you saying whether there is a variance in one of those three requirements that you mentioned?

BY MR. SEEVERS:

Q Do you have the right or is it your discretion, do you have the right as a principal to make this determination?

MR. BAHL: I have to object to that question. Could you please clarify that, I'm not sure I understand what your question is. I'm not objecting to the area, but I'm objecting to the specificity of the question.

BY MR. SEEVERS:

Q You gave me the policy, is that correct?

A Yes.

Q And my question is whether, do you have to go to the superintendent to make that decision when a group or a teacher or somebody comes to you requesting the formation of a club, do you have to go to the superintendent or to the school board or can you make that decision?

A I can make that decision, but I would only make it if I were sure in my own mind that what I was doing was legal and proper as far as the rules and regulations of the school district. [6] If I had a question, I would seek the advice of Dr. Knade and also the school solicitor.

Q Previous to this particular incident or request, have you ever discussed this policy with Dr. Knade?

A I haven't really discussed policy, I discussed other organizations that wish to form.

Q. What sort of student clubs, I mean students of Williamsport Area High School proper, choose to participate?

A Can you be more specific on that question?

Q What kind of clubs are there existing or was there existing in the 1981-82 school year at the high school?

A You have your student government organization, the Future Homemakers of America club, there is a Spanish club, we have different organizations such as the student government, the different publications organizations that meet during activities period, I can't give you a verbatim list of all of them.

Q Is there a Key Club?

A Yes.

Q There is a group Peer Helpers?

A Yes.

Q Are there any political clubs such as the Young Democrats or Young Republicans, something of that nature?

A No.

Q Was there during that school year?

A No.

[7] Q Has there been in the past?

A Not to my knowledge.

Q What about any kind of philosophy clubs?

A Not that I can recall in the years that I've been principal.

Q Are students limited to participation in the existing clubs?

A What do you mean limited, they can't participate in something we wouldn't have.

Q May students initiate new clubs?

A They may initiate new clubs upon requesting approval, yes.

Q Have students initiated new clubs in the past?

A Yes.

Q Could you tell me what the purposes of the existing clubs meeting at the high school might be?

MR. BAHL: Objection to the question. You're asking for the purposes of all the existing clubs or one of them?

BY MR. SEEVERS:

Q Do you know what the purpose of the Key Club is?

A The Key Club is an organization which we feel is there to perform services to the school and to the community. For example, in this past year, they conducted a run-a-thon for the benefit of the Brown Library and collected approximately $1200 to that end. They perform different services for the school [8] serving as ushers for open houses, or ushers for ninth grade orientation. It's also connected with the local Kiwanis Club which is a service organization to the community of Williamsport, it is sponsored by them in fact.

Q Can you tell me what the purpose of the Peer Helpers Club is?

A The Peer Helpers, as I understand it, is a group of students trained by one of our guidance counselors to help other students that are having difficulties with home and school, either personal problems or problems with school work. They serve in the capacity of writing a weekly article for the newspaper, whereupon they answer questions and give advice, so to speak, to students that write in.

Q They not only help students academically, they help them socially?

A That is one of their goals, yes.

Q The existing clubs, is attendance to all these clubs voluntary in nature at this time?

A Yes.

Q If I understand what you're saying, the students can choose to be in any one of these clubs?

A Yes.

Q Tell me, why has the Williamsport School District decided to allow student clubs to meet on a general basis?

A I don't understand your question.

[9] Q What's the reason for permitting clubs to exist within the framework of the high school?

A I personally feel that the students in any high school, in order to have, to receive a well-rounded education, have to have social contacts as well as academic and I think they have to learn how to grow socially, the same as they do academically, and I think this is accomplished in the many activities at the high school.

Q When and where are student clubs allowed to meet?

A Student clubs can meet during the regular activities period which is Tuesday and Thursday of each school week, it runs for a period of 30 minutes. If they so desire, some of them have met after school, depending upon when they wanted to have the meeting. For example, the Key Club has meetings both during the school day and after school at night.

Q Do any of those clubs meet before school?

A Not as a formal group, they may—for example, the Key Club, many of the officers of the Key Club are in one home room and they see each other and they may conduct business before the school day begins, I don't know.

Q Would they be permitted, would any of the existing clubs be permitted to meet before school if they just requested permission to do so, would you grant that permission?

A Yes, sir.

Q You said the activities period is on Tuesday and Thurs- [10] day. Is the time relatively the same every year?

A Usually, I don't have the time schedule before me. The opening school activities usually take about the first 15 minutes and it's right around 7:57 we move into the activities period and it runs to 8:27.

Q The activities period on Tuesdays and Thursdays is the first period, it's not an academic first period——

A Right.

Q ——but, the first period of the day?

A Right.

Q What do students do who do not go to the clubs in the activities period?

A Many students use this as a study period in which they can do homework. Many students work in the library, it gives them the chance to research in the library or take care of other activities of the school, taking pictures for the yearbook, working on the things of that nature. Many of the coaches sometimes meet with the athletic students during this period. I view it as a time during the day in which students can take care of all extra-curricular activities. When they have to meet with somebody, some of them go to another teacher for help, many things that can be done, chorus rehearsals.

Q When does your school day begin and end?

A 7:45 'til 2:20.

Q When does class instruction begin?

[12] A 7:57 they move to the first period, normally.

Q And on Tuesdays and Thursdays they would go to an activity period?

A Yes.

Q How do the students get to and from the Williamsport Area High School?

A By bus.

Q Must they ride on the bus or are they permitted to have some other means of transportation?

A They can ride the bus, their parents can bring them to school, if they so desire, there are some that walk, that are living rather close to the school, and by special permission students may drive if they have a reason for that.

Q Would you say that the vast majority of your students ride buses?

A Yes.

Q How many buses service the school?

A Approximately 40.

Q Is there a late bus?

A Yes, sir.

Q When does it leave the school ground?

A Depending upon the time of year and the activities that are being conducted after school, we run a fall, winter and a spring late bus. The schedule, for example, in the fall, the first bus arrives at approximately 4:15. There's another bus at [12] 5:30 and another bus at 6:30 for the late run.

Q How many buses are engaged in this, say, at 4:30, how many buses would come to the school and pick up students?

A Usually two.

Q Would this be a like number at 5:30 and 6:30?

A Depending, if it's, there are times when it takes four buses for the late runs.

Q Depending on the football schedule?

A Depending on whatever activities there are. This year, we have right at the present time, we have tennis, soccer and football activities in the athletics after school as well as cross country, so probably there would be four buses running to begin the year with until we see what the ridership is.

Q Are students allowed to be inside the school building before and/or after school?

A Yes.

Q On what terms?

A Before school activities or before school, myself and three house principals and many teachers are there as early as 7:15. Normally, if a student group meets after school, the policy is that they must meet with somebody on the faculty, there must be a faculty member present.

Q Would you or a faculty member be required to be with students in the school before school?

MR. BAHL: Are you asking that question as if a student [13] group was meeting before school?

BY MR. SEEVERS:

Q If there were a group of students who came to the school, whether they were in a club or not, if they came into the school, are they required to be under the direct supervision of either a principal or a faculty member?

A If the students are meeting as a club, such as the Key Club, their advisor would be required to meet with them. If they are not meeting as a club group, or are just in the building, we have principals and teacher monitors starting at, the teacher monitors are on duty at approximately 7:30 every morning. Very seldom do we have students in the building before that time.

Q Teacher monitors are?

A Hall monitors.

Q Just hall monitors?

A Yes.

Q Where is the high school located?

A It's located at the western end of the City of Williamsport. About 98 percent of it is in the City of Williamsport and 2 percent is in old Lycoming Township.

Q How many acres does the campus consist of?

A 147.

Q The school is not located within the city proper such as, well, like Jackson, even like Roosevelt Middle School?

A The building itself is entirely within the city limits [14] of Williamsport.

Q How close is it to the nearest private residence?

A Going by way of the road?

Q Yes.

A Approximately a mile, that's a mile from the building.

Q Right. Have student groups ever been allowed to meet without formal recognition?

A Not to my knowledge.

Q At least not while you've been the principal?

A No, sir.

Q Do you have assemblies at the high school?

A Yes, sir.

Q When are they held?

A They're normally held during the regular activities period on Tuesday and Thursday unless it's a special assembly and then on those days we would go to an activity day schedule.

Q Are these required assemblies or are they voluntary?

A Voluntary with the exception of the beginning of the year when we have the orientation assemblies, we do require, for example, next week we will require all ninth graders to be in the auditorium and meet, more or less like a welcoming and then on subsequent days we will meet with each of the grade levels, 10, 11 and 12.

Q Where do the students who do not wish to attend the assemblies go, where do they remain?

[15] A They can treat it as a normal activities period, they can stay in the room, we also permit other activities to meet at the same time that we have voluntary assemblies. For example, we can have a voluntary assembly and a student government meeting the same day, or a Key Club meeting the same day. If it's an assembly where, for example, an entire room wants to go or a teacher wants to go, that teacher goes with them for supervision. Those who do not wish to go can go to another room and be under the supervision of another teacher.

Q The teachers that are in the assemblies, they're basically just there to monitor the conduct of the students?

A In many cases the teachers wish to see what is in the assembly, also.

Q Are they or are they not on formal duty?
A Non-homeroom teachers are on formal duty.
Q Non-homeroom teachers?
A Yes.
Q What outside speakers have been allowed to come in to the high school to speak?
MR. BAHL: Can you put a time limit on that question?

BY MR. SEEVERS:

Q Say during the last three years, can you recall what kind of speakers you've had?
A We had a speaker from, I can't think of the name of the nuclear society, what's the name of the center, down in [16] Kentucky or Tennessee?
MR. BAHL: You lost me.
A The Atomic Center, its people came around and talk energy to the students. In other words, all different forms of energy, nuclear energy, sun energy. We've had speakers come in, most of the speakers we've had have been in the science and nature with the exception of normal regular school activities where they meet with students like the various meetings with the salesmen from the Jostens Company to order forms for graduation.
Q Never had any political science speakers?
A In the assembly program?
Q Yes.
A Not that I can recall. I think the political speakers are taken care of in large group instruction sessions during the regular class period with social studies, American cultures, world cultures, speakers such as Alan Ertel.
Q Do you have a list of speakers who would have been in the last three years?
A I don't have such a list, no.
Q You don't maintain a list of speakers that would have been in there?

A Not a formal list, I have a record of who was there in the last three years somewhere in my correspondence, I'm sure. We have speakers that are made available to us from Lycoming College, professors who have come in and speak on different [17] occasions, usually within the small group discussions.

Q Could you supply me with a list of speakers who have been in the high school during the past three years?

MR. BAHL: Off the record.

(Discussion held off the record.)

MR. BAHL: We have had an off the record discussion during which I have expressed my concern that in order to respond affirmatively to the request that it would be necessary for the principal or other personnel at the school district to go through every piece of correspondence that has been written and sent out of the school district in the last three years. If that is true, we would consider the request to be burdensome, especially at this time of the year. I will, however, ask Mr. Newton if he will see if he can readily come up with a list of speakers that have been at the school in the last three years without having to go through all of the correspondence and insofar as he is able to do that, we will comply with the request. I don't know whether that satisfies you or not, Jerry.

MR. SEEVERS: That's fine. I don't have any objection to that at the present time.

BY MR. SEEVERS:

Q Mr. Newton, are you aware of a group of students that sought permission to form a student group called Petros?

A Yes, sir.

Q Could you tell me when your first contact was with [18] these students?

A I can't give you the exact date. I can tell you that it was at the beginning of the 1981-82 school year during

the month of September and a group of students approached me and asked for permission to start such a group which was not known to me by that name at that time.

Q Who were the students who met with you?

A Lisa Bender, Morris Braggs and there was one other girl there on the first meeting, I believe it was—

Q Kerri Hunter?

A Yes, I think those are the three people that first approached me on the first meeting.

Q Could you tell me what the request was?

A Their original request was not very clear to me. Originally, they were saying that they wanted to meet as a group of students and my question to them was for what purpose and they more or less left me with the belief that they had to meet as a group before they could give me their purpose. I did permit, more or less, an organizational-type meeting for these students to meet so they could tell me what they were going to do. When they made known to me what they were going to do, at that point I had to, in my opinion, say no at that point because of the literature I have read with regard to prior [sic-prayer?] type groups meeting on school time.

Q What did they say the purpose was going to be?

[19] A I would say the purpose is the same as is outlined in the brief that Nate Stuart has filed with somebody, maybe you can help me on that. In the brief here it more or less said that they wanted to meet as a Bible reading and prayer-type group.

Q Your understanding is they wanted to meet for religious purposes?

A Yes.

Q And you decided to deny them permission to meet, is that correct?

A I denied permission for them to meet until such time as I could get further advice from Dr. Knade and from the school district solicitor.

Q Would they have been allowed to meet before or after school?

MR. BAHL: I'm sorry, would you clarify that. He just said they were denied permission to meet pending a review by the superintendent and the solicitor.

BY MR. SEEVERS:

Q They requested to meet during the activities period, did they not?

A Yes.

Q My question to you, would you have denied them permission to meet had they requested to meet before or after school?

A If they had been requesting to meet for the same purpose, I would have denied it, yes.

[20] Q Are there any conditions under which they could have been granted permission to meet?

A That's a rather difficult question to answer until I know what any group that is going to meet, I ask them to state what the purpose of the meeting is for and what they wish to accomplish and without having that, I can't say yes they can or no they can't.

Q What I understand you're saying is, your denial was on the basis that they were going to engage in religious speech, is that correct?

A Yes.

Q Have you ever denied student club status to any other posed student club besides the Petros group?

A You're asking have I denied them permanent or temporary denial?

Q Well, have you denied any temporarily?

A Until at such time as I found out what the purpose of the organizations were.

Q After you found out the purpose, have you denied any complete denial of any other group?

A Not that I can recall.

Q Are you aware that prior to your denial to the Petros group, that students had been meeting in the high school for religious speech?

A Not strictly for that purpose, no, sir.

[21] Q What do you mean by that?

A I was aware of the fact that when you have 2400 students, approximately, in a building, that before school groups of students do meet periodically throughout different parts of the building and I don't think that we are there to restrict those kinds of activities before school, I wouldn't say—

Q Are you aware—

MR. BAHL: Excuse me, he had not finished his answer.

A I was not aware that students were meeting as a formal group for that particular purpose, no, sir.

BY MR. SEEVERS:

Q You were not aware that there were students meeting during the activities period prior to that time who were engaging in religious speech?

A No, sir.

Q Have you ever had any complaints from other students about students voluntarily meeting for religious activities?

A No, sir.

Q Do you or your administration, do you actively screen the speech of other permitted student clubs or groups to make sure you think it's proper?

MR. BAHL: Could you clarify that question, screen the speech of other groups, that is so broad and vague that I think any response to it would have to of necessity also be very broad and vague.

[22] BY MR. SEEVERS:

Q Do you make, you and the other principals or supervisors, actively check, attend, periodically, student groups to make sure that the speech which is going on is what you consider proper?

A I would say that the very rule that we have with regard to any group must meet with a faculty advisor gives us direct input as to what is going on. We ob-

viously cannot check 15 class meetings or 15 different meetings every time they meet.

Q Do you screen or your administration screen speakers to clubs or regular classes?

MR. BAHL: I have to object to the use of the word screen. I don't know what it means in the context of your question and I'll have to object on the basis that I think it should be clarified as to whether he inquires as to the speech before the speech or after the speech, I think the question has to be more specific to be understandable.

BY MR. SEEVERS:

Q Do you require your teachers or club supervisors to present to you or one of the other principals or supervisors, the name of the speaker before that club or class?

A Before the class meets?

Q Yes.

A Yes.

Q Have you ever had occasion to deny permission for an individual to speak before a club or class?

[23] A Yes.

Q Could you tell me on what basis, if you can remember?

A Some years ago we had a request come to us for a man to come and speak on the subject of transcendental meditation.

Q Is that before a club or an assembly or class?

A That was before, he wanted to speak before an assembly group, a voluntary assembly group.

Q Was that brought through him or students or faculty members?

A It was brought to me through a faculty member originally.

Q This would be a normal procedure for you, for the teacher or supervisor to be required to go through the administration for approval of their speakers?

A Yes, sir.

Q Tell me, what was the purpose of the Williamsport School District policy for allowing student clubs to meet on school grounds?

A I think this is a repeat of the question that was asked before, am I correct?

MR. BAHL: I think it is.

MR. STUART: Absolutely.

A As I said before, the purpose of having clubs meet in the school are to teach students how to grow socially as well as academically.

[24] BY MR. SEEVERS:

Q Would you say or do you believe that if Williamsport School District decided to allow religious clubs, such as Petros, to meet on school facilities, that these religious clubs would dominate the school campus?

MR. BAHL: Would you define the word dominate, please, and until such time as you do, I would object to the question.

BY MR. SEEVERS:

Q Control.

MR. BAHL: I have to object to that word, what do you mean by control the school campus?

BY MR. SEEVERS:

Q The fact that they would impose upon, would be of such influence that they would impose upon other students the necessity for their religious beliefs?

MR. BAHL: Your question, then, is whether Mr. Newton believes if he were to permit a group such as Petros to meet, that the effects of that would be to permit or to cause those groups to dominate, control or somehow affect the rest of the activities on the campus?

MR. STUART: Would the word proselyte work?

MR. BAHL: Is my summarization of the question accurate?

MR. SEEVERS: Yes.

MR. BAHL: Can you answer that question?

A I think the question, first of all, is asking me to [25] answer something which has been interpreted to me as being illegal, as far as the interpretation I received from our school superintendent and solicitor.

BY MR. SEEVERS:

Q I'm asking you in your professional opinion whether you think that granting permission to that one group would eventually lead to the domination of these types of groups?

MR. BAHL: I'm going to pose one other objection to that, Jerry, that is the question and the answer to that question is totally irrelevant to the reasons why the denial was made. That is not within the scope of the defenses raised to our complaint. It's not within the scope of the motion for summary judgment or the brief and support thereof. It's also not within the scope of the statement of material facts or affidavit that supports that. I think it is totally and completely irrelevant.

MR. SEEVERS: It's totally irrelevant in relationship to what case law has said.

MR. BAHL: I'm glad you agree with that and I'm glad that's on the record.

MR. SEEVERS: Not to what you said, but my question is relevant based upon what case law has said.

MR. BAHL: I'm sorry, we fail to see that relevancy at all.

MR. SEEVERS: The courts see the relevancy.

MR. BAHL: Where?

[26] BY MR. SEEVERS:

Q You're saying that you cannot answer that question or will not at your attorney's instructions, I'm assuming?

MR. BAHL: I have not directed him not to answer that question because in some way, shape or form it

potentially could be relevant, but I fail to see that relevancy. My objection to the question moreover is that it causes him to speculate as to what his views might have been if he had considered that particular topic, and I think his testimony is that he did not consider that particular topic.

BY MR. SEEVERS:

Q Does the high school give standardized aptitude tests?

A Yes, sir.

Q Can you tell me what they are?

A We have one which has the acronym of a Snap test which is—

DR. KNADE: School Needs Assessment Profile.

A —School Needs Assessment Profile. We also participate in—

BY MR. SEEVERS:

Q Is that Snap, is that totally academic?

A Yes, sir. We participate in one with the state which measures not only the academic, but other things such as student needs and student desires, I can't think of the name off the top of my head, it's EQA, Educational Quality Assessment.

[27] Q How do Williamsport Area High School students rank or score in relationship to other students around the country?

A What measures—did you want me to—

Q Academically?

A If we're referring to college board scores, the Williamsport School District or Williamsport High School is ranked above the national average, above the Middle States' average and above the state average, in math and English scores.

Q In your professional opinion, again, how would you rate the intelligence of the average high school students?

A I think the best I can answer that is I personally

feel that the student body of the Williamsport High School is above average with regard to what I hear going on around the country in like size high schools.

Q Do you give any tests which would measure the maturity level of your students?

A Well, the Snap test that I referred to—could you repeat the question, again?

Q Outside of just academic, math, science, verbal skills, do you have any tests or any that you mentioned or any other tests, do they measure the maturity level of the student?

A I think the Educational Quality Assessment as given by the state does that.

Q Once again, how would the average student in the high school rank overall?

[28] A The last testing that we gave, I have not seen the scores on yet, so it would be rather difficult to answer about the present student body that we have right now. We just took the test last year and the results are due in anytime, but from the last testing that we had, we fared pretty well, I was pretty happy with our students.

Q In general, above average?

A Yes.

Q Do you think, since you're been principal, have you been giving this test since you've been principal?

A I think the first time we gave it was approximately four years ago, when the state started this process.

Q Has the maturity level of the students increased during that time or do you remember?

A Well, I have to have a reference to refer to. In other words, as I said, we've given the first series and we've gone through the second one, but I don't have the results on that yet, I have to have some point of where you're starting at. I personally feel that it has.

Q Do you believe that if you were to make an announcement over the P.A. system that a Petros group was being allowed to meet on school grounds on an equal

basis with other student groups, both religious and non-religious equally, do you believe that your average student could understand that this was not being a school-sponsored club based upon that announcement?

[29] MR. BAHL: I'm going to pose the following objections to that question: Number 1, it's irrelevant. Number 2, it's highly speculative. Number 3, the question does not deal with the reasons why the group Petros was denied official school status. Number 4, I think the question is vague and unclear. Subject to all of these objections, you may answer the question if you are able to do so.

A Would you repeat the question, please?

BY MR. SEEVERS:

Q Do you believe that if you, as the principal, were to get on the P.A. system and make an announcement that the Petros group was going to be permitted to meet as a club along with other school clubs, such as the Key Club, et cetera, on an equal basis, do you believe that the average student in the high school would be able to discern the fact that this was not, that the school was not sponsoring a religious club?

MR. BAHL: I think the question is contradictory in and of itself. If you get on the P.A. system that a club is going to meet on school property during school time on an equal basis with all of school clubs, then in effect the school is sanctioning and authorizing the use of its facilities so, there is no discerning of the fact to be made.

MR. SEEVERS: Are you answering the questions for him?

MR. BAHL: I'm objecting on the basis it is contradictory in and of itself.

[30] MR. SEEVERS: You've already objected on four different grounds.

MR. BAHL: I'll object under as many grounds as are proper, Jerry. The question, I don't think, is an understandable one and I think there is a basic contradic-

tion in it so it can not be answered. I will direct my client not answer that question.

BY MR. SEEVERS:

Q What sort of adult supervision does the school district generally require of student groups, you might have answered that before, but I don't remember.

A Any group of student that meets within the confines of the school district meets with an advisor, a paid coach or somebody of that nature, somebody that is on the faculty or somebody that is being hired by the Williamsport Area School District to perform the function.

Q Students' parents or other adults would not be permitted to supervise groups?

A No, sir, I didn't say that student parents—

Q I know you didn't say that, I'm asking you a question.

A Can student parents—

Q Yes.

A If it's made known to the administration and they receive permission, then they are meeting within the rules and regulations of the school district.

[31] Q I'm assuming that this is done on occasion with reference to band parents or something like that?

A Yes, sir.

Q Generally speaking, do adult supervisors participate in the student group meetings or activities?

A I would say yes. If they're an advisor, I would expect them to be there as somebody who's going to help the students.

Q Are there any student clubs for which the faculty advisor is instructed not to participate?

A Not to my knowledge.

Q Do you have any activities or clubs where the adult is, what I term, a room monitor, like your hall monitors, might be there for control as opposed to participation?

A I do not look upon advisors as hall monitors, I think they're there to help the activities.

Q But, you don't have any presently like that situation?

A Not that I know of, unless it's a group of students that meets on their own in the hallway before school, that would not be something I would know about. It's hard to discern what is a group when you have 2400 students under one roof.

Q At the time of your denial of the group to meet, did you have reason to believe that the Petros group either planned to disrupt school educational activities or would do so unintentionally?

[32] A No, sir.

Q You said you did not know of any religious groups that were meeting in the past, is that correct?

A Can you explain what you mean by religious groups?

Q Similar to the Petros groups.

A No, sir.

Q Do you know the students who were in the Petros group?

A I know several of them personally, yes.

Q How would you describe the conduct of these students that you know in the Petros group?

A Excellent.

Q Do you have any reason to believe that the students seeking to form the Petros group were insincere in their religious convictions?

A No, sir.

Q How much do you know about the religious beliefs of the students in the Petros group?

A The only thing that I can know about it is what they have expressed to me.

Q Did they express to you that it would be students from one particular denomination?

A No, sir.

Q Did they tell you it would be an inter-denominational group?

A Yes, sir.

[33] Q You stated you denied these students permission to meet as a club. Would you have taken disciplinary action against the students if they chose to meet for religious discussion on school ground during the time requested without permission?

MR. BAHL: I object to the question on the basis it's speculative and irrelevant.

A It's difficult for me to answer on something that hasn't happened. Each school day is full of surprises.

BY MR. SEEVERS:

Q That would be in violation of school policy, is that correct?

A Yes, sir.

Q And I'm assuming if they're in violation of the school rules, you would discipline them?

A Let me answer it in this manner. Any activity that's held within the school district is under the control of principals and teachers, students being excused for homeroom to go to these activities must state where they are going. In other words, during the school day, by school law, every student is under the control of the principal and some teacher, that's state law and that's what we must abide by.

Q If they violate that rule, then they would be subject to disciplinary action?

A I would say so.

Q You didn't deny the students seeking to form a Petros [34] group permission because of personal problems with any group members, did you?

A No, sir.

Q Did you or did you not deny the Petros group the same privileges granted to other student groups because of the religious nature of the group's speech?

A That question is not clear to me, would you rephrase it or state it again?

Q Did you or did you not deny the Petros group the same privileges granted to other student groups because of their religious nature of the group's speech?

A What are you referring to when you say group's speech?

Q Because of the nature of the religious speech of the group?

MR BAHL: He's asking for a clarification of the question and you just used the same word, could you put it in somewhat of a different order?

BY MR. SEEVERS:

Q Did you deny permission of the Petros group to meet strictly because their speech was religious in nature?

MR. BAHL: Same objection. The witness would like you to clarify what you mean by nature of the group's speech, the religious nature of the group's speech and you're using the same words and just applying them in a different order.

MR. SEEVERS: It's either religious or non-religious [35] speech, it's either religious or secular.

MR. BAHL: The witness does not understand the question and I think we started this deposition that if he did not understand the question that you ask, you would rephrase it.

BY MR. SEEVERS:

Q Did you arrive at your decision to deny the student group access to school facilities independent of the decision of other school officials?

A My original decision to deny this group to meet was based upon any knowledge of what is permitted under law.

Q But, initially you did not contact Dr. Knade or the school board, right?

A My first answer to them was that I did not think that would be permitted, that it would not be legal to do, so I would check further to make sure.

Q When you made your final decision, to what degree did you rely on the judgment of others, particularly other school officials, Dr. Knade, the school board?

A The original decision?

Q Your final decision.

A Final decision was based upon the advice from Dr. Knade and the school solicitor.

Q Were you in agreement with that final decision?

MR. BAHL: Objection, you can answer the question. Objection to the relevancy of the question, you can answer the [36] question if you can.

A I think the best way I can answer the question is to state, if I am to perform the duties as outlined to me by the school board, I am obligated to go according to the decision of the policy-making group.

BY MR. SEEVERS:

Q Has the school curriculum ever included a course on religion?

A We presently have a course in the curriculum called Western Religions.

Q Was that being taught last year?

A No, sir, there were insufficient students requests for the course to offer it. It was offered initially, but did not have enough students wishing to take the course.

Q Is it meeting this year, do you have enough students this year?

A No, sir, it's called Literature of Western Religions.

Q Can you tell me the last time it was taught?

A About two years ago.

Q Can you tell me what the purpose of that course was?

A The Literature of Western Religion presents reading from literature of Judaism, Christian and Islam, students discuss the significance of religious literature in

universal terms and in relation to their own experiences in an objective manner.

Q How would you distinguish the teaching of that course [37] from a club desiring to meet for discussion or practice of religious speech?

MR. BAHL: Objection to the relevancy of the question. Again, it doesn't matter how he would distinguish those two, what matters is whether or not it is permitted in the school activity to take place during the school hours and on school grounds is or is not constitutional. Subject to that objection you can answer the question, if you are able to do so.

A The difference, as I view it, is that the course in Literature of Western Religions is a discussion of different writings of the different religions. As I understood it, the request made by the Petros group was for the purpose of prayer and for personal gain that they would receive from doing so.

MR. SEEVERS: I have no other questions.

MR. BAHL: I'd like to take a five minute recess and discuss this with Mr. Stuart. Pending our discussion, the witness would not be released.

MR. SEEVERS: Fine.

[38] OSCAR KNADE, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SEEVERS:

Q Dr. Knade, I'm Gerald Seevers, attorney for the students. I'm going to be asking you a series of questions. If you do not understand any of the questions, please advise me and I will try to rephrase them. If you do not request them to be rephrased, I will assume that you understand the question and answered accordingly.

This shouldn't take us as long as Mr. Newton's but I am going to ask you some of the same questions.

Could you give us your name, please?

A Oscar W. Knade, Jr.

Q What is your occupation?

A Superintendent of the Williamsport Area School District.

Q How long have you been superintendent, sir?

A 10 years.

Q Would you tell me what the policy of the Williamsport School District regarding student clubs and student meeting on the public school grounds is?

A The school district has no specific policy with respect to student clubs except that responsibility for their supervision is delegated to the principal in [39] the respective schools.

Q There is not a formal—

A Specific policy governing clubs, that's correct.

Q I guess you weren't here when I asked Mr. Newton, but he said that the policy with which he was acquainted was given to him or passed down to him by the former principal, would that be your understanding?

A It might have been. Coming from, probably, the handbook, the Faculty and Student Handbook for the Williamsport Area High School which is published for years and years.

Q There is a Faculty Handbook as well as a Student Handbook?

A Yes, sir.

Q Could I acquire a copy of that?

A The most recent copy you could acquire is some years ago. It has not been reprinted for more than three years. A new printing is in the process for distribution this year.

MR. BAHL: Are you making a request for that?

MR. SEEVERS: I would request one that would have been in effect last year, the 1981-82 school year.

MR. BAHL: One of the old vintage?

MR. SEEVERS: Yes.

[40] A It would have to be one of the old-timers and there's a folder which the students got, too, that has the

regulations on it, so you'll have to ask that to be supplied as well.

BY MR. SEEVERS:

Q Are you acquainted with the policy, the policy Mr. Newton had at the high school?

A No, I can't say that I'm acquainted with it. I'm not sure what you're referring to by policy.

Q The policy in regards to the meeting of student clubs. You said that there wasn't any formal written policy and in essence it was at the discretion of the principal.

A Of the principal, yes.

Q Had you discussed, prior to this particular incident, had you discussed the policy of student clubs with Mr. Newton?

A No.

Q Are you familiar with the student clubs which presently exist at the high school?

A To a reasonable extent and by name.

Q You don't have any active involvement in the approving them or anything of that nature?

A That's true, I do not.

Q Could you tell me why the Williamsport School [41] District decided or permits student clubs to meet on a general basis?

A In addition to providing an academic environment, the school district also attempts to provide opportunities to explore certain interests which may have general value to themselves and to the community, service clubs, service organizations or organization is built around a specific academic interest, such as language club, German club, for example.

Q This is—could you characterize the purpose of being to help them to grow, not only academically but socially, emotionally, things of that nature?

A Certainly.

Q Is the access to school facilities, is that left to the discretion of the principal?

A Not entirely.

Q Would you have any say so or control as to whether students would be permitted to use school facilities before or after the school day?

A Depends on the purpose.

Q Could you tell me under what circumstances you would expect Mr. Newton or any school principal to contact you in regards to a school club?

A Uh-huh. Yes, any time a request for the use of school facilities cannot be responded to with clear [42] guidance written in the school board policy, that is something that appears to fall outside of policy, there has not been a practice that has gone unchallenged, say, for a period of time, and I'm thinking primarily of things that happened within the school that are, perhaps, no organized nature, like to get a group together to see if we can form a group of 200 students to participate in the float refining of the Susquehannock, could we have an organizational meeting, we can't allow that, that's not covered in the policy. The policy, though, happens to control access by outside groups, non-school related groups and school related groups and sets for a series of fees for the use of facilities and conditions under which facilities might be used and certain rules.

Q You say that there wasn't any written school policy in regard to student clubs, is that correct?

A Uh-huh, in school board policy.

Q Does that mean that the school principal would have to clear all new student clubs with you?

A No. He would not have to, but he might consult with me about it. It might be a budgetary implication, there might be a question of the possibility of teachers' association or union desiring to have the advisor paid a stipend which would have to be negotiated, for reasons such as those, he might have to consult with [43] me whether such an establishment is advisable or permissible.

Q Can you tell me what—are you aware of a group of students who sought permission to form a student group called Petros?

A I am.

Q Could you tell me what your first contact was with these students.?

A As I recollect, my first contact was a conversation with Wayne Newton about the request he received by the group to form an organization with, apparently, faculty sponsorship and permission to meet during student activity periods twice a week. My response to him was that he, before he allows the group to form, he should secure a written description from the proposed organization precisely what the group would do and what it expected of the school.

Q Did you personally meet with any of these students?

A Yes.

Q Can you tell me what the students related to you as to their purpose?

A Their purpose was related to me previously in the form of a written proposal. I met with them in November in order to discuss with them why their proposal [44] could not be approved.

Q Their proposal was to meet as a student group to engage in religious speech, is that correct?

A I would imagine so, if religious speech means prayer, testimony.

Q Those were the things that they told you specifically they were going to do?

A Those are the things that were written in the proposal.

Q Did you decide to deny access to the Petros group to school facilities?

A Upon the advice of legal counsel, I decided to deny.

Q Can you tell me on what basis this denial took, what was the basis of the denial?

A You mean my communicating it?

Q As to your understanding of your solicitor.

A My understanding of the reasons for the denial is that the request, if implemented and approved, would have constituted a violation of the first amendment of the United States Constitutions interpreted by the supreme court, federal district court and district court in a variety of jurisdictions, or federal circuit court, I should say.

Q These students wanted to meet during an activity [45] period, is that correct?

A That's correct.

Q Would you have denied them also had they desired to meet before or after school?

A I would have if the request had been to meet on school premises.

Q Was there any conditions under which they could have met on school premises under the conditions as such?

MR. BAHL: I object to the question as speculative and does not have proper foundation. You can answer the question.

A No.

BY MR. SEEVERS:

Q To your knowledge, have you personally ever denied a student group status to any other proposed student group?

A I cannot think of any.

Q Are you aware that prior to your denial of the Petros group, that students had been meeting in the high school for religious speech?

A No.

Q In reference to speakers who come to the classes or assemblies, do you have any active part in saying they may or may not speak or is that left solely for the dis- [46] cretion of the principal?

A It's not specific, although I have been consulted about requests to bring in resource people, would this

be permissible, would it work, for an occasional drop in.

Q Can you give me any specific instances where a speaker would have been denied permission to speak?

A While I didn't handle this directly, I think Mr. Newton's answer about someone wanting to make a speech about transcendental meditation was denied, we did consult about it and decided transcendental meditation was a religious expression.

Q That was also denied because of the speech was to be religious in nature?

A It was solely and purely a request, as I recall it, to present a religious speech.

Q You're familiar with the high school testing program, are you not?

A I am.

Q Would you concur with Mr. Newton's opinion that Williamsport High School, the average Williamsport High School student ranks higher, basically, academically?

A Academically I would agree.

Q Than other student. Would you agree with the assessment that, I think, their maturity level would be [47] higher?

A I could not generalize as he did. There are a number of tests that are given in the school district for a number of years which show a wide range of maturity on different issues and attitudes.

Q Could you tell me what test they might be?

A That's the educational quality assessment test administered by the Pennsylvania Board of Education and measures both academic and attitudinal status of students. The test is related to the 12 goals of quality education in the state board of education and some of those goals have to do with things such as developing positive self image, appreciating the work of others and so forth and so on that they're bound to be attitudinal measures insofar as the paper and pen test can do that.

Q You attend all the school board meetings, I assume?

A Yes.

Q Outside of the ones where you might be out of town.

A Yes.

Q Do you take an active part in the discussions?

A Yes.

Q Outside of the fact you do not have a vote.

[48] A That's correct.

Q Can you tell me when the proposal of the Petros groups was considered by the school board?

A It was in January, probably be the third week in January, whatever date that was. It's probably on my affidavit.

Q To the best of your recollection, was there a formal vote taken at that time?

A There was none taken.

Q Can I conclude that the final decision to deny access to the Petros group, that was made by yourself?

A No. The Petros group received a letter from the president of the school board indicating the board's position that affirmed earlier actions of the administrations that could not permit the group to be organized and acted on school premises.

Q There was not a formal vote affirming that, correct?

A That's true, there was none. There didn't need to be any. Let me put it a different way. No one on the board moved to change the course of action, there was neither a mover or a seconder.

Q I'm assuming Mr. Eberhart was just instructed to address the letter to the students?

A The sense of the board is pretty well obvious [49] to most the people around the table and the solicitor's opinion hadn't changed any since advising me in October or so and that there was no reason to change the decision.

Q Do you know of any—are there any school board policies or regulations requiring adult supervision of student clubs or student groups?

A It doesn't need to be, it's covered fairly adequately in state law. Student groups must be supervised by a professional employee of the commonwealth.

Q You were here when Mr. Newton answered that question, were you not?

A No, what did he say?

Q Mr. Newton, I do believe, said that there were occasions in which students' parents or other adults supervised the student groups.

A That's true in athletics.

MR. BAHL: I have to object to that question on the basis that Mr. Newton's response dealt with a particular activity of a group, be it an event, weekly meeting where there would be an adult supervisor who would have been a parent. I do not believe he indicated there is a student group that functioned solely and exclusively with a student parent and not with any faculty representative.

BY MR. SEEVERS:

[50] Q Have you ever had any complaints about students meeting on a voluntary basis at the high school for religious activities?

A No.

Q You said you met personally with some of the students of the Petros group. Had you ever met them previous to that time?

A Not really. I knew one of the students by reputation, the other I did not, had not known previously.

Q I assume that would be Morris Braggs?

A That's correct.

Q Did you have any reason to believe that the students seeking to form the Petros group were insincere in their religious convictions?

A I have no such reason.

Q Since you denied them to meet, would you have expected there to have been disciplinary action taken against these students had they decided to meet for their

religious discussions when they had been denied, if they met on school grounds?

A Are you telling me that they did meet or speculating that they might have met?

Q I'm speculating. Would you expect disciplinary action to be taken, this is one—

A I'm not sure I want to speculate about that [51] either.

MR. BAHL: I'll phrase the same objection to the question of this witness that I did when you asked it of Mr. Newton.

BY MR. SEEVERS:

Q I think you answered this, but you arrived at your decision to deny them access to school facilities because of their speech was religious based upon the solicitor's opinion, is that correct?

A Their purpose was religious and the solicitor's opinion indicated that such purpose could not be accommodated in the school.

Q You stated that in the January meeting of the board there was general agreement to abide by the solicitor's opinion?

A That is correct.

Q Do you have any reason to believe that the Petros group either planned to disrupt the school educational activities or would do so unintentionally?

A I have no reason to believe that they planned, I will not speculate whether they might have or not.

MR. SEEVERS: That's all the questions I have.

CROSS-EXAMINATION

BY MR. BAHL:

[52] Q Based upon objective academic testing, are there students at the Williamsport High School that rank higher than national average?

A Yes.

Q Based upon that same objective ranking, are there students at the Williamsport High School who rank below the national average?

A Yes.

Q Would there also be students ranking above and below the state average?

A That is true.

Q With respect to the concept of maturity; whatever that means, and with respect to objective measurements of that, for example, we talked about the portions of the E.Q.A., are there students at the Williamsport High School that would be ranked more mature than the national average?

A On specific measures, there would be some ranked at a higher level of expectancy and others would be ranked at a lower level.

Q So, there are students that fall on both sides of normal?

A Always.

Q I think it's necessary to clarify for the reader of this deposition the decision of the school [53] board in January of 1982. You have indicated that no formal vote was taken. Could you testify as to whether or not anyone made a motion to that previous decision of the superintendent of schools be rejected or changed?

A No one made such a motion.

Q What was the result of the failure of anyone to make such a motion?

A Previous action stood.

Q Was that indeed the position of the school board as you understood it, that the previous action stood?

A Yes, because the request to the school board by Lisa Bender, et al was on appeal from my decision and by not taking any action one way or another, the appeal was denied.

Q Dr. Knade, exhibit five to your affidavit which is attached to this motion for summary judgment is a January 21, 1982 letter of Richard F. Eberhart, presi-

dent of the school board. Is that the letter previously referred addressed to Lisa Bender?

A It is.

MR. BAHL: No further questions.

(Whereupon, the deposition was concluded at 11:28 A.M.)

[54] CERTIFIED QUESTIONS

The following questions were not answered by the deponent upon advice of counsel:

1. Page 28, Lines 20 through 25.

/s/ Shelly L. Hampton
SHELLY L. HAMPTON
Reporter—Notary Public

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WITNESSES

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

ORDER

[Filed Nov. 9, 1982]

The Background of this Order is as follows:

Presently pending before the court are cross-motions for summary judgment. At the present time, the record is incomplete as to the exact nature of the activity period, the type of activities or clubs that have been, and would be, approved, and what proposed groups, if any, have been denied approval. Accordingly, the court shall order the parties to submit affidavits or other documentation addressing these points within fifteen (15) days of the date of this Order.

NOW, this 9th day of November 1982, it is hereby ordered that the parties shall submit affidavits or other documentation within fifteen (15) days of the date of this Order addressing the questions identified in this Order and any other information deemed appropriate.

/s/ William J. Nealon
Chief Judge
Middle District of Pennsylvania

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

AFFIDAVIT OF WAYNE E. NEWTON

COMMONWEALTH OF PENNSYLVANIA)
) ss
COUNTY OF LYCOMING)

WAYNE A. NEWTON, being duly sworn according to law, deposes and says that he is and has been Principal of the Williamsport Area High School and that the facts as set forth below are true and correct to the best of his knowledge, information and belief:

I. EXACT NATURE OF ACTIVITY PERIOD

The "activities period" is a regularly scheduled time during the school day which occurs between 7:57 a.m. and 8:27 a.m., usually on Tuesdays and Thursdays of each week. Depending upon the need for same, any day of the week can and has been designated as an "activities day".

Attached hereto, made a part hereof and marked Exhibit A is a Williamsport Area High School "Bell Schedule" which shows the time periods during a regular day and an activities day. On a regular day, the first class period begins at 7:57 a.m.

Each school day officially commences at 7:45 a.m. when all students must be in their homerooms, at which point attendance is taken. School District supervision of each student occurs as soon as that student reaches the high school building, which is before 7:45 a.m. each day.

If a student does not attend one of the club meetings or activities, he or she is obligated to remain in home-

room or study in the library until the next class period begins. In addition to the activities and clubs below mentioned, the activities period is utilized to allow students to visit the school's computer station to take practice sample questions in preparation for college entrance examinations and to orient students to various careers and vocational opportunities by sessions entitled "Careers Galore".

II. TYPES OF ACTIVITIES OR CLUBS THAT HAVE BEEN AND WOULD BE APPROVED.

Activities and clubs which promote the intellectual, physical and social development of students have been approved as officially sanctioned student activities, permitted to meet during the school day, i.e. the activities period, permitted to use school facilities and with a faculty advisor or monitor assigned to it. The current student activities so sponsored by the School District are:

Student Government

Key Club

Class Organizations (student class officers and executive board)

Library

Business English Club

Future Homemakers of America

Vo-Tech Club

Speech and Drama Club

Ecology Club

The Cherry & White (student literary art magazine)

Billtown Banner (student newspaper)

La Memoire (student yearbook)

Band (concert and marching bands)

Choir

Among the activities and clubs which have existed in the past and which could be renewed if student interest warrants are: Archery, Art, Audubon, Aviation, Chemistry, Chess, Field, Forest and Stream, Future Nurses and Future Teacher clubs. Others include the Bowling, German, Poetry, Photography and Ski clubs.

Any student activity or club which is considered to contribute to the intellectual, physical or social development of the students and is otherwise considered legal and constitutionally proper would likely be approved as an officially sponsored and sanctioned school activity. There is no formal mechanism or procedure for applying for school sponsored or sanctioned status, other than by oral and possibly written request as was followed by the students wishing to have "Petros" recognized as an official school activity.

III. PROPOSED GROUPS WHICH HAVE BEEN DENIED APPROVAL

To the best of my recollection, no other proposed student group or activity has been considered constitutionally improper and/or has been denied official school sponsorship.

/s/ Wayne E. Newton
WAYNE E. NEWTON
Principal

Sworn to and subscribed before me this 23rd day of November, 1982.

/s/ Mary H. Bower
MARY H. BOWER
Notary Public
Williamsport, Lycoming Co., Pa.
My Commission Expires Oct. 17, 1983

WILLIAMSPORT AREA HIGH SCHOOL

BELL SCHEDULE

REGULAR DAY		ACTIVITIES DAY
7:45	Homeroom Convenes	7:45
7:48	Attendance Deadline	7.48
7:53	Homeroom Period Ends	7:53
	Activities Period Begins	7:57
	Activities Period Ends	8:27
7:57	First Period Begins	8:31
8:43	First Period Ends	9:12
8:47	Second Period Begins	9:16
9:33	Second Period Ends	9:57
9:37	Third Period Begins	10:01
10:23	Third Period Ends	10:42
10:27	Fourth Period Begins	10:46
11:13	Fourth Period Ends	11:27
11:19	Fifth Period Begins	11:33
11:20	First Lunch Begins—Section I	11:34
11:24	First Lunch Begins—Section II	11:38
11:50	First Lunch Ends—Return to Class	12:05
11:54	Class Begins	12:09
12:05	Second Lunch Begins—Section I	12:14
12:09	Second Lunch Begins—Section II	12:18
12:40	Second Lunch Ends—Fifth Period Ends	12:50
12:44	Sixth Period Begins	12:54
1:30	Sixth Period Ends	1:35
1:34	Seventh Period Begins	1:39
2:20	Seventh Period Ends (Dismissal)	2:20

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF LYCOMING)

GERALD W. SEEVERS, being duly sworn according to law, deposes and says, that he is the attorney of record for the plaintiffs, that on August 24, 1982, he took the oral depositions of Defendants, Wayne A. Newton, principal of the Williamsport Area High School, and Defendant, Oscar Knade, Superintendent of the Williamsport Area School District, that the original deposition has been filed with this Honorable Court and that the following is a true and accurate summary of portions of the depositions relevant to the Order issued by this Court on November 9, 1982;

A. TESTIMONY CONCERNING SCHOOL POLICY ON STUDENT CLUBS

1. With regard to official school policy on student activity clubs, Dr. Knade testified, that "(T)he school district has no specific policy with respect to student clubs except that responsibility for their supervision is delegated to the principal in the respective schools" (Knade; p. 38, l 22 to p. 39 l 1.).

2. Mr. Newton testified that the policy which he followed was passed on to him verbally by his predecessor. (Newton: p. 4, ll 21-23).

B. TESTIMONY CONCERNING NATURE OF ACTIVITY PERIOD

3. Regarding the nature of the activity period and the purpose of student clubs in the Williamsport Area School District. Dr. Knade testified that, "(I)n addition to providing an academic environment, the school district also attempts to provide opportunities to explore certain

interests which may have general value to themselves and to the community service clubs, service organizations, or organization (sic) is built around a specific academic interest, such as language clubs, German club, for example." (Knade: p. 41, ll 3-9). Dr. Knade also agreed that the purpose of clubs was to help students grow socially and emotionally, as well as academically. (Knade: p. 41 ll 10-13).

4. Mr. Newton also indicated that the purpose of school clubs is to enable students to "grow socially" thereby helping them "to receive a well-rounded education". (Newton: p. 9, ll 1-8). According to Mr. Newton, the activity period is viewed by him, "as a time during the day in which students can take care of all extracurricular activities." (Newton: p. 10 ll 18-20). Those students who do not want to participate in club activities during the period use the time for a host of diverse activities, including studying in their homerooms, working in the library, taking pictures for the yearbook or meeting with athletic coaches. (Newton: p. 10 ll 11-22).

C. A LIST OF APPROVED ACTIVITIES AND CLUBS AT WILLIAMSPORT AREA HIGH SCHOOL

5. The clubs and activities approved by the school which have meetings during the activity period include:

Key Club
Peer Helpers Club
Future Homemakers Club
Newspaper
Yearbook
Spanish Club
Vocational Technical Club
Business English Club
Student Government Association
Cheerleaders
Stage Crew
Audio-Visual Aides

Office Aides
Lab Assistants
Color Guard
Three (3) Bands
Orchestra
Three (3) Choirs
Speech and Drama Club
Sports Teams

(Source, Williamsport Area High School LaMemoire Yearbook for 1980-81 and 1981-82, relevant sections are attached hereto, made a part hereof and marked Exhibit "A").

D. NO OTHER CLUBS DENIED PERMISSION TO MEET

6. Dr. Knade testified that during his ten years as Superintendent of Williamsport Area School District, he was not aware of any club other than Plaintiffs that have been denied the opportunity to meet. (Knade: p. 45 ll 15-18).

7. Likewise, Mr. Newton testified that in his eight years as principal of the Williamsport Area High School, no group other than Plaintiffs (Petros), has been denied permission to meet. (Newton: p. 20 ll 12-21).

/s/ Gerald W. Seevers
GERALD W. SEEVERS
Counsel for Plaintiffs

Sworn to and subscribed
to before me this 22nd
day of November, 1982.

/s/ Linda J. Bowman
LINDA J. BOWMAN
Notary Public
Williamsport, Lycoming County

My Commission Expires August 11, 1986

Member, Pennsylvania Association of Notaries

[Certificate of Service Omitted in Printing]

MUSICIANS

MILLIONAIRE CONCERT AND MARCHING BANDS

The 1980-81 Marching Millionaires and Millionaire Concert Band both had a very good performance season. The Marching Band completed a very successful year with a fifth place at State Finals. This was the first year that the band competed in the highest and most difficult division of Cavalcade, the "Yankee" class.

At "Black Diamond Cavalcade" in Shamokin, the band took the Grand Prize, and it took second place at the "Pageantry in Motion" at Ephrata. High marching scores and high music scores, along with second place, were awarded to the Millionaires at "Bands on the Warpath." The band cleaned up at the Loyalsock Tournament of Bands Show, when it took first place overall, first place in Division IV, Best Marching and Maneuvering, Best Music, and Best Band Front. With the work of preparing for all these competitions, the band members weekends were pretty much taken up. Their fall and summer weeknights were devoted to practice, but looking back on all their victories and awards, the practice was well worth their effort. This year, the band was lead by Drum Major, Keith Kuzio, and Field Captains Chris Straka and Mike Helminiak. Under the direction of these three students, band director Paul Kellerman, and with the help of many other dedicated people, the band was able to find great satisfaction in winning, and in learning to work together in such a large group.

The Millionaire Concert Band also had an extremely active and successful season. SomSome of its activities included: the Winter Pops Concert, the Spring Concert, and the concert at Knoebel's Amusement Park. The band also sponsored the Millionaire Music Festival that took

place at the high school and concluded downtown with a huge parade, on May 30 and 31. One of the band's proudest achievements was the earning of a Superior rating on Grade VI Music at the PMEA State Adjudication Festival, a portion of the Millionaire Music Festival. This is the highest rating possible on some of the hardest music written.

As a whole, both portions of the Millionaire Band enjoyed many successful performances and tasted victory many times.

STAGE BAND

The 1980-81 edition of the W.A.H.S. stage band had a very successful year; it was full of talent and no less than three of its senior members will be going on to major in music—David Shover, Roger Williams, and Brent Robinson. The stage band, under the direction of Donald Griffith, was made up of select members of the brass and percussion sections of the Millionaire Concert Band. The members had to audition in order to be selected for the group. The group performed at the "Pops" concert in January, at the Spring concert in April, and at Knobles Grove in May. One of the band's best "audience grabbers" this year was the Herb Albert hit, "Rise," which featured a trumpet solo by Roger Williams. Other soloists included Dave Shover on cornet and Burr Harrison on tenor saxophone. Next year, more appearances and more applause!

COLORGUARD AND WINTER GUARD

Members of the Millionaire Indoor Colorguard have a deserved reputation for being excellent performers. The Guard demonstrated this by receiving the highest score ever earned by any unit in the Harrisburg Indoor Drill Association in regular competition—a stunning 93.3!! In

addition, their reputation for good sportsmanship and friendliness is as great, and for most members, being friendly is as important as winning trophies. When asked what being a "winner" means, guard member Chrissy Casson replied, "It doesn't simply mean taking home a trophy. Winning means knowing that the entire group is doing its best and entertaining the crowd." While the guard was at the H.I.D.A. finals, they received a standing ovation before they even performed, showing that they are highly respected not only for their quality performances, but for their quality personalities. The W.A.H.S. Colorguard's reputation precedes it performances!

This year the guard performed at a home basketball game, a pep rally, an activity period assembly, a Mansfield State College basketball game, a lecture demonstration for music education majors at Mansfield and at an exhibition for the Bi-State Colorguard Circuit. In their six competitions, they placed first four times, and took second place twice. They placed second in the H.I.D.A. finals.

Even though being in the guard takes a lot of hard work and time, the members find it worthwhile because the guard teaches them "self-discipline and respect for others."

Symbolically, many guard members cited their favorite moments as those times at competitions when they are "standing hand in hand waiting for the judges announce the scores." Unity in action! It continues to typify indoor Colorguard excellence!

SENIOR CHOIR

The Senior Concert Choir, under the direction of Mr. Thomas Gallup, has been recognized as one of the most outstanding choirs in the state. The highly accomplished choir performed a total of ten times throughout the 1980-

81 school year, with concerts consisting of both sacred music and "pops" music. On May 30, the group performed in front of a demanding panel of judges during the Millionaire Music Festival. They received nothing but praise from all three judges—praise that was indeed well deserved for the hard working choir. Besides performing several outstanding and well-attended concerts, the group sent fourteen of its most talented members to P.M.E.A. District Chorus. They included Mark Bailey, MaeLynn Goodman, Bill Hessert, George Moore, Beth Nesbett, Bradley Nichols, Maureen Reeder, Barbara Rightnour, Brent Robinson, Carolyn Rogeaux, Chris Santalucia, David Shover. MaeLynn Goodman, Bradley Nichols, and David Shover proudly represented the Williamsport Area High School at P.M.E.A. All-State Chorus.

These talented musicians and the rest of the members of the choir made quite a name for themselves throughout the state and region. The 1980-81 year was a very successful one for the Senior Choir, filled with many fine accomplishments of which to be justly proud.

SOPHOMORE CHORUS

This year, the sophomore chorus added a new dimension to the word "dedication." Knowing that they were the last sophomore chorus who worked to ring out chords and harmony at W.A.H.S., the talented singers presented one great concert after another. The year began with a complement of 60 sophomores, each singing in their own style. But as the year went on, the group unified tremendously to the point where they earned rave reviews from experienced judges in the W.A.H.S. musical festival. Under the direction of Mrs. Janet Rehman, the chorus presented a sacred music concerts, a Christmas concert, and a "pops" concert in the Spring. "Rehearsals are never boring, quipped sophomore Tim Keller. Despite the sometimes light-hearted attitude towards their work, these students, many of whom are going on with musical ca-

reers, developed into a sophomore choir whose accomplishments, spirit and dedication are not soon to be forgotten.

SHOW CHOIR

The W.A.H.S. show choir is a select group of members of the Sophomore choir and the Senior choir. Being chosen as a member of the Show Choir is quite an honor as the tryouts are extremely competitive. Directed by Mrs. Janet Rehman, the Choir, performs at local church activities, at school functions and various other events throughout the town.

The choir's repertoire includes such songs as "You are So Beautiful," with a solo by senior soprano Carolyn Rougeaux, "Peggy Sue," and a medley that consists of songs from three musical eras. The talented young group was in great demand due to their large audience appeal. They sang songs such as "Making Whoopie" for the older generations, many Barry Manilow selections for the romantic persons in the audience, and few gospel or spiritual numbers. The ability of the show choir to spark excitement in their audience is simply incredible. Anyone listening to this talented young group of very select musicians will know why they are in such demand. The Show Choir can easily make an audience feel like singing along or clapping, and one always walks away from one of their concerts feeling a little better inside.

MUSICAL

This year, the Williamsport Area High School ventured into new dimensions—dramatic musicals. When Mr. Gallup announced that the musical would be "West Side Story," enthusiasm grew remarkably.

After the cast was picked, the enthusiasm continued—through practices, dress rehearsals and the weekend performances. This sense of dedication turned out to be

one of the biggest contributors to the success of the show.

Led by Director Gallup and their never-tiring choerographer, Miss Shelly Steward, the cast spent endless nights preparing for the show. The endless nights payed off. Who can forget the "Dance at the Gym," which featured the entire cast dancing their hearts out, just like their parents did twenty years ago? or the Jets, led by Riff, portrayed by senior John Weaver, ruling the streets only to be challenged by Bernardo (junior Robb Warren) and the Sharks, finally climaxing in the rumble with both leaders being slain? Or the Sharks dancing to "America" led by Bernardo and Anita, played by junior Maureen Reeder? And surely, no one would forget the tear-jerking ending, with Maria (senior MaeLynn Goodman) clutching onto Tony (junior Bradley Nichols) in his last moments of life.

These are just brief highlights of a truly excellent show. On closing nights, some of those tears shed at Tony's death were real tears—tears of sadness knowing the show was over. The cast had grown into a close family, and now the family was splitting. The show was over. True, it may be over, but the memories will last forever.

MUSICAL REVUE

This year's musical revue combined songs from two famous musicals, "Carousel" and "Shenandoah." The cast consisted mostly of members of the Sophomore Chorus and Senior Choir. Tryouts were held after school and the revue was performed here at the High School on January 17th, after only two weeks of rehearsal.

The revue opened up with the song, "June is Bustin Out All Over" sung by the entire cast. Judi Johnson followed up with her solo "What's the use of Wonderin."

Bill Hessert and Beth Nesbitt sang a duet called "When the Children are Asleep," from "Carousel." Soloist Carolyn Rougeaux performed "If I Loved You." This section of the musical revue, dedicated to "Carousel," closed with the moving song "You'll Never Walk Alone."

The second portion of this revue, centered around the musical "Shenandoah," opened up with "Raise the Flag of Dixie," performed by the entire cast. Bryan Hunsinger and Robb Warren followed up with a duet called "Why Am I Me?," and all the men in the cast sang the next song "Next to Lovin'." The revue closed with the song "Freedom" sung by everyone. The co-directors, Mrs. Janet Rehman and Mr. Thomas Gallup, prepared the cast for their performances and Miss Patricia White, a student teacher, accompanied the musical members on the piano. The total success can be attributed to the hard, unfailing work of the cast, at practices and on the night of their performance.

ORCHESTRA

This past year has been a busy one for the W.A.H.S. orchestra. Under the baton of Mr. Walter Straiton, the orchestra performed at several concerts and concluded their year with a trip to Williamsburg, Virginia. In order to finance their trip, the group held car washes and sold such items as stationary and cheese and bologna. To be sure, working toward this common goal of earning enough money to go to Williamsburg helped to unify the orchestra in ways other than musical.

The orchestra's several performances included a Fall Concert in November, a "Pops" concert in January, an instrumental all-district concert in March and a Spring Concert in May.

After the District orchestra auditions in November several members of the W.A.H.S. orchestra qualified for District Orchestra which was hosted by Williamsport.

At Districts in November, members of the Millionaire orchestra qualified to go on to the All-State Orchestra in January with many of the members going on to Regional Orchestra in March.

Branches of the W.A.H.S. orchestra include the Chamber Orchestra which performed at the James V. Brown Library, and the String Quartet, which presented a program at the W.A.C.C. President's Reception in March.

SERVICE GROUPS

STUDENT GOVERNMENT ASSOCIATION

S.G.A. completed one of its busiest years on record. Faced with what sometimes looked like an endless schedule, the S.G.A., helped withdraw a record amount of blood from wide-eyed volunteers in the annual Bloodmobile visit. The always-enthusiastic members manned concession stands stocked with homebaked goodies for after school munchies, sponsored an orphaned child and entertained the student body with the multi-media presentation of "Hard Times." In addition to this, officers who attended the district convention were proud to report that next years convention would be held here at W.A.H.S. One of the highlights of the S.G.A.'s year was the election of Jean Zvikas as Laurel Queen. In the midst of all their work, the S.G.A. never lost their benevolent attitude, evidenced by their contribution to the Frank Forney Fund Drive and the Honor Society. And few who attended or saw them will never forget events like the Valentine's Day Dance or the Christmas Door Decorating Contest. In between all of this activity, the student leaders elected a president and vice president who attended the national convention. Winding things down, the student government helped choose representatives to serve on a steering committee to develop next

year's school. 1981—A year of fast-paced activity for W.A.H.S.'s Student Government Association.

CHEERLEADERS

At the end of the school year, there is not a scoreboard tallying up the number of wins and losses for the Millionaire cheerleaders; in their own unique way, these ladies win by actively and visibly supporting and encouraging others to win. To Varsity Cheerleader Chris Mull, cheering means "supporting our school and trying to raise the spirit of fellow classmates while at the same time, helping the teams to get psyched up and ready to face their opponents." The cheerleaders attend various sports to "give the team support," regardless of whether they are winning or losing. It's the responsibility of these lady Millionaires to cheer on our sportsmen in the face of both victory and defeat. To some of our cheerleaders, winning is not just a higher number on the scoreboard, but rather, as Shelly Weigle says, "giving it the best that you can in the name of good sportsmanship." Bobbi Wagner adds, "Being a leader not a follower—anyone can be a follower." Indeed, the cheerleaders *are* leaders: in cheering, in stirring school spirit, and in supporting our athletes. Co-captain Patty Segraves expressed the group's feelings when she said, "Cheerleading wouldn't be as much fun if we didn't have the appreciative players and coaches to cheer for. They're a real credit to the school." Well done, cheerleaders!!

KEY CLUB

The Key Club, a service organization, is the sponsor of various school activities.

Members of the Key Club faithfully participate in a variety of community drives to raise money for needy groups throughout the area each year.

Every fall, Key Club sponsors W.A.H.S. participation in the annual canned food drive, run by WMPT radio

station. All of the collected cans are then distributed throughout the area to provide less fortunate families with the traditional feasts of the holidays.

Along with the traditional events held each year, the Key Club sponsors a number of new and refreshing events from year to year such as the Apple Booth at the Fall Family Festival, numerous bake sales, and the individualized service offered to victims of hardships, hunger, and extraordinary circumstances. One such service held this year is the Frank Forney Fund Drive. This drive was held to help offset the costly medical expenses due to Frank Forney's illness but more importantly, to show Frank our support at a time when support is needed most.

The Key Club also sponsors events held solely for pleasure, such as the Walt Disney movie, "Billion Dollor Hobo" shown this spring to serve as a break from the day-to-day routine of the students. For admittance to the movie, students were required to contribute two books of green stamps to the Frank Forney Fund. The Key Club's movie served a double purpose both toward helping an individual and in entertaining the student body at the same time.

As a reward for their hard word, the Key Club members attend the annual Key Club convention, this year held in Downingtown, Pa., where members of the various local high school Key Clubs join to exchange new ideas and concepts to provide a better Key Club for each forthcoming year.

BUSINESS ENGLISH CLUB

During the premier year of the Business English Club at W.A.H.S., some memorable moments included the long, hot afternoons during the summer months washing and scrubbing cars. When school began in the fall, one would

think that fund-raising activities would cease. Not so. When classes began, the activities of the Business English Club went ahead full speed. Bake sale after bake sale was followed by candy sales and other fund raisers. "At first glance, I didn't think anyone would want to join the club," said vice-president Renee Bigelow. "But once everyone got to know the people and saw how much fun we have working, lots of people wanted to join." "Work," they did, but they did enjoy themselves. The year culminated in a trip to New York City, where the Billtowners gawked at the Empire State Building and the World Trade Center. Led by Mrs. Edwards, the club members presented the Outstanding Business Student Award to their president, Kim Harstead. "I was so excited," gasped Kim. "It was really a great way to end a great year."

STAGE CREW

As another service group at W.A.H.S., the W.A.H.S. stage crew functions similarly (oddly enough) to the cheerleaders, that is, as the hardworking "invisibles" supporting the "visible." As a result, personal victories are often vicarious. For each production displayed on stage, there are members of the stage crew, under the supervision of Mr. David Ward, hard at work in the control booth. These people work out of the sight of the audience, yet without them, performances would be impossible. Before any presentations are ever staged, members of stage crew must do such things as survey the auditorium, set up microphones, position the stage lights and learn production cues. According to crew member Mary Evers, "We must be available to open up the auditorium and run the systems for both practices and shows." Senior Mike Perry stated his reason for becoming a member of the stage crew was "because of my interest not only in theatrics, but also in the workings behind the scenes of a production." He speaks for many

stage crew members, all integral parts of the "silent kingdom" behind stage successes here at W.A.H.S.

AUDIO-VISUAL AIDES

Known affectionately around the school as "Doctor Dave's Gang," the A.V. Aides are vital to the function of the school. Without these "angels of mercy," the teachers would be without audio visual materials and Mr. Ward, the "mad doctor" himself, would be swamped with requests. The A.V. Aides perform various functions in the A.V. room and around the school: they deliver and collect the film projectors and films, they run the videotapes and the closed circuit television studio, repair broken equipment and dub tapes.

Their reasons for assisting Mr. Ward in the A.V. alcove vary. Some choose the aides' life because they like the difficult workload or because a friend recommends the work to them. Some, like David Rhodes, are there to gain knowledge of the equipment and electronics because they are going to pursue a career closely related to electronics and audio-visual technology.

Through their battle with stubborn equipment and unrelenting teachers' demands, they never fail to follow Mr. Ward's example in being cheerful and willing to rise every day to the calls of duty.

OFFICE AIDES

There are a group of students at W.A.H.S. who enjoy being of service to their fellow students, teachers, and principals. Through dedication and hardwork, the office aides have a background to be proud of. These students forfeit their study halls to go and work in the offices, answering the telephones, writing slips, filing, running errands and collecting absentee cards.

As senior Michelle Liddic puts it "You get the feeling you're doing something good for your school." All the

office aides claim that office security is good and their group is really like one big family. There are varied ways of becoming an office aide. You can be recommended by a teacher, contacted by a principal or just walk into the nearest office explaining that you would like to help out. It seems apparent that being an office aide gives you an opportunity to improve your skills, make friends and have fun.

LAB ASSISTANTS

The defining qualities of a lab assistant are quite elusive, since there are so many assistants and they have such varied personalities. For some, being a lab assistant means to be "willing" to help others and do the best job that you can," "doing what you set out to do in the beginning," or "earning a feeling of accomplishment." Others think that it would help if one were "50 percent helpful, and 50 percent mad scientist!" Either way, a lab assistant must be willing to accept the responsibilities of grading papers, preparing labs, cleaning, making solutions, running dittos, recording grades, making ice, babysitting the "Boss," telling good jokes, and catching snakes!!

After his assigned tasks are completed, a lab assistant can do what ever he likes with his free time. One may choose to studiously do homework, go to the library, do other work for the teacher that is not related to the lab, or one can choose *not* to be studious. The most memorable moments for the assistants come during this free time; one assistant had the good fortune to beat Mr. Bonaslawski at arm wrestling. One got ditto ink all over his hands and face, and one was even allowed "to perform inhuman experiments with books, pencils, desks, and even people!" What ever they do, the presence of the lab assistant eases the teachers' work load so that he can instruct and provides the teachers with some heartfelt comic relief.

PUBLICATIONS

LA MÉMOIRE
EDITORIAL

The 1980-81 *La Mémoire* staff has again survived the bitter blast of impossible odds. After cranking out tons of copy, staying for late, late, late night sessions, organizing and taking pictures of squirming, whining underclassmen, subsisting on Pepsi and bad jokes, and hearing the criticism but somehow missing the praise, *La Mémoire* has constructed another pictoral personification of life as it exists at the Williamsport Area High School.

The work begins in early September and continues relentlessly until the dying days of the school year. Nancy Mextorf, Editor-in-chief, guided the infant book safely through many menacing deadlines and with the help of the "handfuls of dedication," helped it arrive safely, completed on June 5, 1981 at 12:07 a.m. in D-209.

Besides working on the book, selected students earned the honor of attending the CSPA and the PSPA conventions during the year. There, they absorbed new ideas on layout form, caption writing, illustrations, and expressive writing.

After a grueling year, the staff of *La Mémoire* can look back with some degree of satisfaction knowing that the yearbook possesses that unique ability to mellow and beautify with the passing of time.

BILLTOWN BANNER

The dedicated members of the *Billtown Banner* staff are burdened with the responsibility of getting a newspaper to the students every two weeks. But after publishing seventeen regular bi-weekly issues and six extras, some members of this closely knit staff still get a chance to participate in literary activities outside of school. In

the Scholastic contest, Jessica Strasburg won two blue ribbons and five gold keys for her photography. Mary Bernardi received a gold key for her entry in the critical essay category, and Walt Colley had the only district portfolio that was sent to New York for special judging. Members of our school's newspaper staff are true artists who take pride in their writing; this was proven to be true when the Senior Division of the Ready Writing Contest was won by senior Mary Bernardi. At the PSPA convention, held in Lancaster, various members of the *Banner* staff managed to win awards because they had, as Editor-in-chief, Ed Hurwitz noted, "a combination of humility, pride, and savoir faire." Photographer Walt Colley won a Keystone, one first palce, and one third place; Ed Hurwitz posted two first places and three second places; and Mary Bernardi received a Keystone, three first places, two second places, and one third place. Overall, at the PSPA Convention, the *Billtown Banner* staff placed second among all other schools which were represented. As *Banner* prepares to roll into its third year under Martha Hasting's advisorship, it appears as if more space should be cleared in the trophy case!

CHERRY AND WHITE

Since 1895, when the first Cherry and White was printed, the magazine and the individual members of it's staff have had plenty of time to acquire honors and awards—many of both have been acquired in those eighty-six years—but that doesn't make winning an award any less special. Hearing, as we did in November, that *The Cherry and White* had taken a first place award in the Columbia Scholastic Press Association evalulations was memorable, but the blizzard of awards won by the magazine and its staff at the Pennsylvania School Press Association Convention in Lancaster the same month was even more exciting.

What makes the *Cherry and White* experience worthwhile? Not only do regular staff members develop a feel-

ing of pride and accomplishment in working on the literary magazine, but the contributors also "feel good when they get something published." Said Sue Bachman, Co-editor of the Cherry and White, the publication "gives students an opportunity to see what their classmates are achieving in creative writing, photography, and illustration. It gives those who are talented in these areas a chance to share their expressions of out with others."

Working for the magazine, according to senior Betsy Stearns, "gives me a sense of belonging, I feel as if I'm part of a greater whole, helping to create something special for everyone to enjoy."

The magazine led by Editor Geoff Haun and co-editors Sue Bachman and Sherryn Lehotsky received a Keystone award—the highest rating PSPA bestows on any publication. Then there were the individual Keystones: Geoffrey Haun, Mary Bernardi, and Gordon Wenzel for short stories, Melvin Conrad collected a second place for illustrations. All in all, it was another year of success for Pennsylvania's oldest scholastic publication and next year promises more of the same.

LA MÉMOIRE BUSINESS

Just as the backbone is the main support and lifeline of the body, so is the publication business staff a necessary and vital part of all successful school publications. The *La Mémoire* Business Staff, under the competent management of seniors Jean Essip and Katie Hopper is no exception. The members of "Mr. T.'s" business staff play a crucial role in front of and behind the scenes of both the *La Mémoire* and *The Cherry and White* by promoting, distributing and sellings ads for each publication. The job of soliciting for ads began last August, a time when most of us are still squeezing the last bit of life from our vacations. The prospect of sacrificing part of summer vacation is not too inviting, but this is a minor detail considering the fact that unless funds are

raised, publications of *Billtown's* yearbook and literary magazine would be virtually impossible. As soon as all the ads are sold—usually by the month of November—publications business staff members turn their attention toward the selling of yearbooks. Along with the responsibility of yearbook sales, is added the task of selling and distributing *The Cherry and White*, which is offered in conjunction with *La Mémoire*. Next year, all these responsibilities will be shifted to the new business managers, Chris Poretta and Brenda Wascher, who will have to face such persistent problems as rising costs of publication and an increase of six hundred students with the incoming ninth grade. Being a member of the publication business staff may sometimes seem a thankless job, but as one business staff member explained, "To reach your goal and pick up some good friends along the way makes it all worthwhile."

CLUBS

FUTURE HOMEMAKERS OF AMERICA

The Future Homemakers of America Club here at W.A.H.S. is a group of very remarkable young ladies who devote their extra time to learning about good home practices and to providing service to the school and community. Their service projects and contributions to different charities serve to help these organizations to achieve their goals as well as give the members of the club valuable experience in homemaking and service work. Some of their contributions this year include entering the "Dress a Doll" contest, sponsered by the Bank of Central Pennsylvania, helping needy children in Williamsport and preparing twelve dozen sticky buns as a service project for the Divine Providence Hospital Auxiliarys' Bazaar!!

The club is not "all work and no play" though, the club members do get a chance to attend various conventions where they can learn various homemaking techniques and have fun at the same time. Among some of

these conventions attended this year were a trip to the "Holiday House", a presentation by the Duboistown Garden Club and a Halloween party at the Muncy High School. To round out a very satisfying and complete year, the F.H.A. members attended the State Convention held at Host Farms in Lancaster, Pennsylvania.

VOCATIONAL TECHNICAL CLUB

Vo-techers, those fascinating people you see walking through the halls wearing the "tech rat" on their jackets, are back this year in full force. Led by Dave Hubbard, the Vo-tech club president, the group set some personal goals for themselves. Their goals ranged from success in drafting, automotive repairs, and cosmetology, to mechanical engineering, welding, and masonry.

At Tech people learn on-the-job-training that will help them in the years to come. Those who are in Vo-tech are tomorrow's skilled craftsmen, combing alternate nine weeks at WACC and WAHS, and are evaluated on their skills and abilities.

Next year, the number of Junior Vo-tech members is expected to be up from that of this year. And although the Seniors are leaving for jobs or training programs, they will leave behind them a record of hard work and service, and in their places, this year's Juniors will carry on the good name of WAHS "Vo-tech."

SPANISH CLUB

In the midst of the many activities which occupy the time of a large percentage of students in our school, stands the Spanish Club. The Spanish club is composed of students who primarily will be using the Spanish language in their future plans. In the many times that the words "bake sale" were uttered on the morning announcements, several belonged to the Spanish Club! "It was really terrific how everybody chipped in and baked something for the sales," stated Melissa Phillips. But it

was the skating party that really got things "rolling" at the beginning of the year." Then, later in the year the "Spaniards" enjoyed a night of pizza and bowling at the YMCA. "The whole night was really exciting," commented Lori Miller. "That was probably the most fun we had all year," added Mindy Levinson. The club also began a newspaper especially for Spanish students, called "El Periodico." This paper provided some interesting information for Spanish-speaking students. The year concluded with a formal banquet at the Antler's Club. Awards were given to those students who worked harder and longer than others.

PLAYS AND PLAYERS

SENIOR CLASS PLAY

All students need something in which they may "lose" themselves; one of the things students chose for this purpose was participation in the senior class plays. The annual senior dramatic effort this year was a fantastic opportunity for fledgling students to learn to actually "become" the character they portrayed. It is rather difficult at times to become a different character and to be convincing at it. Mrs. Hunter, the director of *The Absence of a Cello*, helped each of them overcome his self-consciousness. Once on stage, though, it was easy for the actors to block out everything, to just "be" the character, to "be" the play. When an actor is on stage, he cannot think "Who's out there? Who's laughing? Are they laughing at my jokes?" All of those things come before and after the action of performing. Senior Becky Golamis commented about her part in the play: "When I stopped speaking and had to just sit still, that's when the nervousness came and when it was very hard to stay in character. The best part about playing a crazy kleptomaniac of an old lady was afterward, when people would say 'You were so funny! You stayed in character all the way through—I can't *believe* that was *you*!' That's when

I knew I had achieved something good and fulfilling; I was capable of going outside of myself." The senior class play is then, both an education for the actors, and an entertainment for the audience. Truly, the best of both worlds.

SPEECH AND DRAMA

The 1980-81 edition of Speech and Drama Club, coached by Mrs. Miriam Hunter, had an extremely varied performance season. Comedies, tragedies, and topical plays, including an original play by Keith Wagner, entitled "Daddy," highlighted a great year of presentations in D-Large group and in the auditorium. They also presented a play in the planetarium, with the help of Mr. Jan Turzanski. Among the plays offered: "Love of One's Neighbor," "The Lottery," "Pen of My Aunt," "Bread," "The Dear Departed," "The Neighbors, "Opening Night," "The Importance of Being Earnest," "Thunder on Sycamore Street," "The Necklace," "Send Me No Flowers," "The Last Eligible Man" and "Sunday Costs Five Pesos." Also presented was a scene from "The Sand Box," "The Silver Chord," "Diary of Anne Frank," "Come Blow Your Horn" and "Antigone." The Drama Club offered, in addition, "Luncheon for Three" and the "Mechanical Maid." With a season like the one just ended, it would be hard to imagine one to top it. But next year, with the coming of the freshman and sophomores, Speech and Drama promises to provide an even more diverse selection, and a great opportunity for anyone who's been bitten by the acting bug to give it a good scratching!

LA MÉMOIRE 1982

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WILLIAMSPORT, PENNSYLVANIA
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LA MÉMOIRE

ACTIVITIES SECTION

[Pictures and their captions omitted in printing]

S.G.A.

Student Government, a prominent group that emphasizes dedication and responsibility, was again busy planning many activities for the student body at W.A.H.S. Money-earning projects, like the sale of stuffed animals. Wolfgang candy, cheese and sausages, and numerous cake sales and car washes enabled the S.G.A. to sponsor various activities. In the first week of school, S.G.A. held orientation for the freshmen and sophomores to aid these new students in adjusting to their new school. Many students who attend W.A.H.S. participated in the annual Christmas door-decorating contest, for which the S.G.A. awarded prizes honoring the most original door design. The holiday season was topped off by the various dances including Homecoming, Christmas Formal and of course, the Valentines's dance. Thanks to the members who decorated and arranged, these dances were a big success. This year's District Convention for the Student Government Representatives, held at W.A.H.S. was a success and showed other representatives from other cities and towns in Pennsylvania how an efficient student government can accomplish different tasks with good results and superb results seem to be the expectations of our S.G.A., because no one expected anything less than 100% cooperation from the bloodmobile. In all, 207 pints of blood were collected during the bloodmobile visit, and those students who were unable to donate blood * * *

KEY CLUB

The 1981-82 Key Club emerged with a very successful year under the leadership of their President, Mark Lee, and their advisor, Mr. Dick Creveling. This year was Mr. Creveling's first year as the advisor of this prestigious group and he should be commended for an organizational job well done. Mark also showed his initiative and leadership in fulfilling the role of President of the Key Club here at WAHS. He was presented the President's award at the Key Club District Convention. Our local club has increased by thirty members this year, bringing the total membership to seventy-eight, and interest has been expressed by at least thirty people for members this next year.

The first of many activities sponsored by the Key Club was a cookie and bake sale held at the Arts and Crafts Show in the fall. Other fund raisers included several car washes, ushering at the Consistory, and of course, their big project of year, the P.D. Mitchell Memorial Runathon, P.D. Mitchell was a well-known leader of our community, as well as a member of the Kiwanis Club. The Runathon provided funds which the Club in turn donated to the J.V. Brown Library to buy books as a memorial to Mr. Mitchell. Among other services and activities in which the Club participated were Christmas caroling for the elderly, holding their own Christmas concert, hosting trips to such places as Philadelphia and attending Kiwanis Club luncheons to learn about mutual interests, helping to run the Special Olympics, visiting the community theatre, serving as guides and ushers for P.T.S.A., hosting the teacher's teas, and sponsoring the canned food drive to provide food for those in need.

Thanks to the cooperative and initiative demonstrated by the WAHS Key Club as a whole, they successfully exemplified the International Theme, "Pursuing Tomorrow's Potential."

FHA HERO

What is the F.H.A.?! Why, that's the Future Homemakers of America, a group of young women who learn good home practices and help in their school and community through participation in a wide range of projects. They are basically a service group trying to better themselves so that in some way, they may better their community.

The 1981-82 school year was filled with many such projects and successes.

Holiday favors were made and delivered to the Park Home, whose residents greatly appreciated the adding of a little cheer to the Christmas season. They sponsored the "Snacking Awareness Day" here at WAHS, which involved handouts of a variety of nutritious and healthful snacks. A Turtle Patch sale, which offered turtle-shaped patches for holey jeans, was held as another fund-raising routine.

An end of the year celebration was held in the form of a dinner for members and their families. The year of hard work and diligence did not go unnoticed or unrewarded; at the dinner several members were given awards for increasing membership and for significant participation.

MARCHING BAND

Concert Band

The Concert Band season starts the week after marching band season ends. The concert band program emphasizes tone quality, blend, balance, and technique. These aspects of musicianship were taught during the first period for the Millionaire Band, and the second period for the Top Hat Band. The bands worked on comparatively hard music; for the first concert, on the twenty-second of February, the Top Hat Band played "Variation Overature" by Clifton Williams. The Millionaire portion

of the program featured Alfred Reed's "First Suite for Band", a medley from the Broadway musical *Evita*, and "Hoak Raskolniki (A Dance for the Old Believers)" by David Holsinger.

The bands participated in several festivals. The ninth grade band sent representatives to the Lycoming Band Directors' Association Junior High Band Festival. The two day festival was held at Jersey Shore Area High School on the March twelfth, and thirteenth. The festival centered on musical endeavors; the band put together a concert under the direction of Henry Neubert, Associate Professor on the Music at Ithaca College School of Music. The final concert featured a clarinet solo by one of our students, Kelly Stetts.

Some members of the Millionaire Band attended a similar festival for high school students. This festival was held at Hughesville High School, and was conducted by John Miliauskas, Director of Bands for Lake Lehman High School. The concert featured "Novena" by James Swearingen, and held on Saturday, December fifth.

Both bands faced state adjudicators on April twenty-sixth. The Millionaire Band presented three numbers one being "Satiring Dances" by Norman Dello Joio; the Top Hats, "Variation Overature" by Clifton Williams.

The Millionaire Band participated in an adjudication festival in South Williamsport with a band from Canada and one from Florida. The bank housed members of the Canadian band for two days, and participated in a number of social events with them.

The bands presented their spring concert on May twentieth. The Program consisted of a mixture of serious concert band literature, marches, and popular tunes. The final activity for concert band was the traditional picnic at Knoebals Grove, on May 23. They played their concert, listened to the jazz bands, and enjoyed the park.

The Millionaire Music Festival event that brought bands from far and wide to compete in concert band, jazz

band, indoor guard, and parade competitions, was held May twenty-eighth, twenty-ninth, and thirtieth. The members of the band spent these days running errands at the high school, meeting new people, and, as always, enjoying being a part of the WAHS band.

COLOR GUARD

Time, endurance, and strength, not only of body, but of mind, are requirements that came in handy when one becomes a member of the Williamsport Colorguard. A necessary part of the Millionaire Marching Band, the group added that extra flourish and finess to the band. To be good at what they do, many long hot summer days were spent in practice. Come fall, school days expanded into the night hours, but it all seemed worth it when the Guard took to the field; a unit, whole and complete, which brought home first place honors time and again. After numerous competitions and hot bus trips, followed by grueling practices the sight of the home crowds cheering and rising to their feet in a standing ovation made all their time and hard work worthwhile.

This year, the product of their sweat and determination resulted in many well-earned laurels, topped off by bringing home a coveted First Place in the Tournament of Bands.

The girls who comprised this year's group certainly made the high school proud. Their display of discipline and elegance revealed the unity and cooperation that existed within their group.

TOP HAT BAND

The Top Hat Marching Band, comprised entirely of freshmen, made its debut last fall at the football games. This addition to the W.A.H.S. instrumental music program serves to prepare the ninth graders for the Millionaire Band in which they will be participating, in following years.

The marching band season started for the Top Hats in August, with a week of evening rehearsals. Then practice was held regularly on Mondays after school to perfect their show.

The ninth graders, led by drum major Margaret Burns entertained for pregame and halftime at football games, and cheered enthusiastically for our football team. The band's show was made up of familiar tunes. Opening with "Hand'em High", with a trumpet solo by David Waldmen, and the drum solo, "Thank God I'm A Country Boy", featuring mime-like guard work, and mallet percussion played by members of the band. The closing number was "Theme from Ice Castles". They lent support from the stands with spirited renditions of our pep song "On Wisconsin", other college pep songs, and "Musical Cheers."

STAGE BAND

The synchronized rhythm of the drum, the brassy swells of trumpets and trombones, and the harmonious blending of saxophones helped make the 1981-82 editions of the W.A.H.S. stage bands two of the finest heard in many years. *Two* of the finest? Yes! Because of the number of students wanting to play in the Williamsport Area High School Stage Band, applicants had to be divided into two groups.

Both bands work under the direction of Mr. Donald Griffith, who also directs the Roosevelt Middle School's band.

Since the bands are non-competitive, they devote their energies strictly to concert performances. The performances this year have included special audiences from Mansfield State College for adjudication, our own SGA conventions, and the Millionaire Music Festival, not to mention the bands' own regular concert audience. The bands combined force consists of an impressive array of eleven saxes, seven trombones, seven trumpets, three

guitars, and two basses, two keyboards, four drums sets and two percussionists. However, some of the positions will be vacated next year, as graduating seniors, Burris Harrison, John Novalis, Chris Straka, Lenny Federowicz, and Mark Webb leave seats to be filled in the sax, bass, and brass sections. The band's finale will be at Knoebals Grove, where they will play for the band's annual picnic.

ORCHESTRA

A love of music, the thrill of working toward a common goal, the freedom to be a little crazy at times—these aspects serve to transform a group of students with instruments into a hard-working, fun-loving orchestra. Although the members of the orchestra enjoyed many relaxed and fun times together, a lot of hard work went into preparation for a concert. The addition of this year's freshmen provided the group with an extra challenge. Their first concert of the year was given on January 11 at Saint Boniface, a task that could not have been accomplished without the dedicated leadership of Mr. Walter Straiton, W.A.H.S. orchestra director.

Another first for the Millionaire Orchestra was the exchange program with Haverford High School. On the weekend of April 3rd, the orchestra ventured to the outskirts of Philadelphia, where they gave a combined concert with the Haverford High School Orchestra. Two weeks later, the same concert was given at W.A.H.S. with the Haverford Orchestra as our guests.

As a grand finale, on May 26th, St. Boniface once again echoed with sounds of the Millionaire Orchestra. The last concert of the year ended with an exhuberant demonstration of Tchaikovsky's Second Symphony.

A subdivision of the orchestra is the Chamber Orchestra. Consisting of 20 outstanding young musicians, the Chamber Orchestra is required to rehearse extra music on its own time. Upon completing this task, the group performs Christmas carols at various places, sometimes to aid in orchestra fundraisers.

SHOW CHOIR

Through rigorous auditions, sixteen members of the Senior Concert Choir were selected to form the prestigeous Senior Show Choir of 1981-82. The group gave many performances throughout the year, but concentrated its effort during the holiday season. The Show Choir was a favorite form of entertainment for various organizations and associations, like the Women's Club and various churches. The most important performance of the Christmas season was probably the annual evening show for the Williamsport Rotary Club. The performance this year entailed not only singing, but choregraphy as well. Together, the two forms presented a visual delight to the audience and left the audience with a feeling of joy and good cheer.

Adding another dimension to the W.A.M.S. musical talents, was the formation of a second Show Choir, the Freshman-Sophomore choir members. With a compliment of 36 students, they progressed marvelously and made W.A.H.S. proud by flourishing during the year's trial period. Performances and schedules were shared this year between the two show choirs. The usually hectic holiday season was less of a hassle, with each choir handling a share of the total performance list.

To wrap up the year, both show choirs united to give a "Pops" concert. Their final performance convinced many of the members to again audition for next year.

SENIOR CHOIR

Under the direction of Mrs. Thomas A. Gallup, the Senior Concert Choir has sung through another school year producing great sound and having a lot of fun doing it. The choir represented the high school in the way they knew best; the finely-tuned group performed a total of six times through the '81-'82 school year. The music performed ranged from traditional sacred pieces to popular contemporary songs. As has become somewhat of a tradi-

tion, the choir again traveled to the Pine Street United Methodist Church to perform their Sacred Heart concert. The concert consisted of a selection of religious and sacred pieces. This year's Christmas concert was one of unparalleled excellence. Originally planned for December, the concert had to be postponed until January, due to inclement weather. As a follow up to the Christmas concert, the Spring Pops concert was held in April at W.A.H.S. in the commons. Greeted by an appreciative audience, the choir performed with the same degree of excellence. This year, the W.A.H.S. choir was represented by 27 students at the District Festival, held in Sunbury. From districts, 10 students were chosen to attend the Regional Festival, a competition which will be held in Philadelphia in fall.

Earlier this year, the choir found itself in need of funds. To alleviate this problem, the choir went out and diligently sold cheese and sausages to area residents. Both choirs combined their selling efforts and managed to make quite a fair profit. Looking back, this year's choir undoubtedly will be remembered as one which overflowed with achievements, with spirit and talent to match.

THE CHERRY AND WHITE

The Cherry and White has the unique job of creating school's literary magazine. This, the oldest literary magazine in Pennsylvania, relates the style and the imagination of participating students as well as staff contributers. The work begins during the heat of the summer with staff work sessions and continues throughout the entire year, with the publishing of five issues annually, filled with poems, short stories, as well as photography. Throughout the year the staff members seek to encourage interested students to submit any art in the form of literary material that may be used in further publications.

This year, *The Cherry and White* captured the highest award given to any publication by the Pennsylvania School Press Association, the coveted Keystone Award.

The staff also participated in various activities which included the attendance of the annual Columbia School Press Association, held in New York City. Despite the fact that *The Cherry and White* is basically funded by the Business Staff, a bake sale was held in order to retain the necessary funds the staff needs to survive.

As in most organizations, the dedication and hard work was visible by the success of the magazine.

BILLTOWN BANNER

First place rating from Columbia Scholastic Press Association, and an All-Columbian Award for Graphics—certainly that national recognition would keep us interviewing, writing, typing, and waxing for another year.

Probably *Billtown Banner* staffers know better than anyone the exciting number of individuals and groups who excel and fulfill school, community, and personal expectations. We try to reach them all, and to let our readers reach them also.

A summer issue welcomed students in September, reminding them of Maynard Ferguson's trumpeting at the Susquehanna Boom Festival. When "Beatlemania" came to the Capital Theatre, BANNER reporters met the men behind the scenes of that popular Broadway show. Kurt Gingrich and Vicki Albarano saw that spectacular from in front of the stage and from behind the scenes' When Dr. Demento, nationally known disc jockey, performed at Williamsport Area Community College, Richard Cardene absorbed that insanity and shared it with our readers who could not attend. Because Kurt encouraged community interest in the Lycoming County Historical Society's 200th anniversary, BANNER appears in the Society minutes, proof of our broad scope of coverage.

BANNER readers knew when hunting and fishing season opened and whether they could anticipate a catch. They knew who won ready writing, salabes and scholastic.

SPEECH AND DRAMA

Continuing their tradition of presenting the high school with excerpts as well as full-length renditions of many humorous and provocative plays, the Speech and Drama Club filled the 1981-82 school year with many memorable theatre productions. The year's productions took place in many locations about the school and involved several forms of drama. The club performed primarily in the D-large group instruction room, but on occasion branched out to the auditorium and library. They not only performed shows for students, but for various church groups, the Red Cross, and the SGA Spring Convention as well.

Under the direction of Mrs. Hunter and aided by Mr. Dan Keefer, the Speech and Drama Club produced many popular plays including "The Odd Couple," Cyrano de Bergerac."

LIBRARY AIDES/LAB ASSISTANTS

Dedication, hardwork and lost study halls, are all included in the life of a libary aide. Stamping out books, signing passes, and arranging books in an orderly fashion are just a few of the tasks that must be performed by the library aides. Although many people take these people for granted, we must think "Where would we be without them?"

LAB ASSISTANTS

A lab assistant's tasks are many and varied. He usually has to mix solutions, grade papers, print dittos, record grades, clean the room, catch snakes, and most importantly babysit. Lab assistants are free to do whatever they please once all the work is done. Some serve as a model student and finish homework or study, while others prefer to do nothing. No matter what they do, teachers would be swamped with work without these "angels of mercy."

OFFICE AIDES/AV AIDES

OFFICE AIDES

The group of students who give up their study halls in order to help in the offices say that "it's worth it." To become an office aide, one needs to go to any office and volunteer his services. An aide's duties include writing passes, filing, collecting absentee cards, answering the telephone, and just plain running errands. In return, you have the opportunity to make friends, improve your skills, and have fun.

A.V. AIDES

"Doctor Daves Gang," as the A.V. aides are known, performs various tasks around the school as well as in the A.V. room. They must deliver and pick-up films and projectors from teachers, dub tapes, repair equipment, run video tapes, and operate the closed circuit television studio. Without these helpful students, who must also put up with stubborn equipment and demanding teachers, ease Mr. Ward's workload and provide everyone in the school with A.V. materials.

Some students become A.V. aides on recommendations from friends. Others are trying to learn more about the equipment or electronics in order to help them pursue a related career.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

COMMONWEALTH OF PENNSYLVANIA)
) ss
COUNTY OF LYCOMING)

AFFIDAVIT OF LISA CAROL BENDER

LISA CAROL BENDER, being duly sworn according to law, deposes and says:

1. I am a plaintiff in the above action. I am familiar with the allegations in the complaint and with the facts pertaining to those allegations. The statements set forth in the affidavit are based on my personal knowledge.

2. In September of 1981 during the third week of the fall semester of my senior year, a fellow student, Morris Braggs, and I met with the principal of Williamsport Area High School, Mr. Wayne Newton, concerning obtaining permission to have a voluntary non-denominational prayer and fellowship club during the extracurricular activity period. He told us that we would be allowed to meet but that we could not use the school's public address system, newspaper or bulletin board to announce, advertise or otherwise promote our meetings. We agreed to abide by this policy.

3. At the first meeting of Petra, there were about 45 students present. The school had a student body of about 2400. The students at the meeting were from numerous denominations and religious groups. My present recollection is that the denominations represented at the first meeting included Baptists, Presbyterians, Pentecostals, Lutherans, and Brethren. At our first meeting, the students read a passage from the Bible, without comment. They shared certain prayer requests and had a prayer

time. During the prayer time, a number of students prayed out loud about the requests.

4. The faculty monitor was physically present in the room during the meeting, but did not take part in any of the students' religious activities or discussions. The monitor had been selected by the school. The monitor took attendance and spent the time correcting papers.

5. At the second and last meeting of Petra, there were about 20 students present. We met briefly and discovered that the school was not going to allow us to meet again. We had a brief prayer time about the situation and returned to our homerooms.

Respectfully submitted,
/s/ Lisa Carol Bender
LISA CAROL BENDER

Sworn to and subscribed
before me this 4th day of
May 1983.

/s/ Elaine A. Ignico
Notary Public

My Commission Expires: May 17, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

[Filed May 6, 1983]

STIPULATION

AND NOW, this 6th day of May, 1983, pursuant to a request made by your Honorable Court, it is hereby stipulated between and among Gerald W. Seevers, Esquire, Attorney for Plaintiffs, Nathan W. Stuart, Esquire, Co-counsel for Defendants, and David R. Bahl, Esquire, Co-counsel for Defendants, on behalf of their respective clients, as follows:

1. *FACULTY ADVISORS.* The Williamsport Area High School does not have a written policy concerning student clubs, the role of adult advisors of such clubs or who those adult advisors must be. There is, however, an unwritten policy of the Williamsport Area High School that each student club have an adult advisor who is generally a faculty member or another employee of the school district. In some circumstances, parents of student club members serve as adult advisors.

The principal, Wayne Newton, and his administrative staff make decisions as to whom the faculty advisors will be. Selection is based upon the nature of the particular club and corresponding background of the faculty member. Although students may request a particular adult advisor, the principal and his staff have final approval as to who will serve as an advisor to a student club.

2. *BULLETIN BOARD AND PUBLIC ADDRESS SYSTEM.* Each student club has a bulletin board assigned to it, with the club name at the top. This bulletin board may be used for announcements or displays. During morning announcements the club is permitted to

announce over the school public address system the times for its meetings. The clubs are not required to use the bulletin board or make announcements over the public address system.

/s/ Gerald W. Seevers,
GERALD W. SEEVERS, ESQUIRE
Counsel for Plaintiffs

SAMUEL E. ERICSSON, ESQUIRE
KIMBERLY W. COLBY, ESQUIRE
CURREN TIFFANY, ESQUIRE
Co-counsel for Plaintiffs

/s/ Nathan W. Stuart
NATHAN W. STUART, ESQUIRE
Co-counsel for Defendants

/s/ David R. Bahl
DAVID R. BAHL, ESQUIRE
Co-counsel for Defendants

APPROVED BY THE COURT THIS 6th DAY OF MAY, 1983.

/s/ William J. Nealon
NEALON
Chief
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' BILL OF COSTS AND ATTORNEYS' FEES

I. INTRODUCTION

On August 11, 1983, plaintiffs served their request for costs and attorneys' fees. The defendants hereby object to the taxation of any costs or the assessment of any attorneys' fees against them for the following reasons:

First, this matter is now on appeal and a final judgment has not yet been entered against all of the defendants. Therefore, no costs should be taxed until the appeals process is completed.

Second, even if plaintiffs' request for costs were appropriate for consideration at this time, plaintiffs have attempted to recover costs which are not compensable under 28 U.S.C. § 1920 or Rule 54 of the Federal Rules of Civil Procedure.

Third, plaintiffs are not parties who have prevailed on civil rights claims, and they are not entitled to attorneys' fees under 42 U.S.C. § 1988 as a consequence.

Fourth, plaintiffs' request for attorneys' fees is plainly deficient under the established principles of this Circuit.

Accordingly, plaintiffs' bill of costs should be rejected.

II. PROCEDURAL HISTORY

Plaintiffs brought this action in June of 1982 against the defendants, The Williamsport Area School District and certain individual defendants affiliated with the School District. Plaintiffs sought both declaratory and injunctive relief against the defendants, and sought to

recover under constitutional theories and pursuant to 42 U.S.C. §§ 1983 and 1985(3).

After some discovery was taken, defendants moved for summary judgment; the plaintiffs filed a cross-motion for summary judgment on their Complaint. At issue, in essence, were two claims: (1) whether the defendants' conduct violated plaintiffs' right to the free exercise of their religion and (2) whether the defendants' conduct violated plaintiffs' right to free speech.

By Order dated May 12, 1983, this Court granted summary judgment to defendants insofar as plaintiffs' free exercise claim was concerned and to plaintiffs insofar as their free speech claim was concerned. On June 10, 1983, one of the individual defendants affiliated with the School District, John C. Youngman, Jr., filed a timely notice of appeal from the Court's award of summary judgment to plaintiffs.

III. ARGUMENT

A. *Taxation of Costs and Assessment of Attorneys' Fees Is Inappropriate until the Appellate Process Is Completed.*

Rule 54(d) of the Federal Rules of Civil Procedure authorizes this Court to award costs to the prevailing party in a case. Assuming, for the sake of argument, that plaintiffs are the prevailing parties in this litigation, even though they were not successful with respect to all of their claims, Rule 54 nevertheless allows this Court, in its discretion, to "postpone imposition of . . . costs until final disposition of the cause." 6 *Moore's Federal Practice*, ¶ 54.70[5] at 1323 (footnote omitted).

Here, in a case which presents close questions of law, a timely appeal has been filed by one of the defendants. A reversal by the Court of Appeals of this Court's decision in favor of plaintiffs would, because of the nature of the declaratory and injunctive relief sought, inure to

the benefit of all defendants, and would change plaintiffs' position from that of prevailing parties to that of losing parties not entitled to costs of any sort. In these circumstances, the defendants submit that this Court should refrain from awarding any costs until the Court of Appeals has made its decision.

Just such a ruling was made in *Brown v. American Enka Corp.*, 452 F. Supp. 154, 160 (E.D. Tenn. 1976), where the Court denied taxation of costs in favor of a prevailing party in a civil rights action when an appeal was pending. In language instructive in this case, the Court stated:

> Costs should not be allowed until the appellate process is complete and the action has been remanded to this Court for entry of final judgment . . . . This is because, should the costs be allowed to the [prevailing party] now, if the Court of Appeals reversed the judgment of this Court on appeal, it would appear the [non-prevailing party] might be barred illogically and contrary to the statute, from taxing the costs against the [prevailing party]. (Citations omitted.)

See also America Infra-Red Radiant Co. v. Lambert Industries, Inc., 41 F.R.D. 161 (D. Minn. 1966) (taxation of costs continued pending decision on petition for certiorari).

Accordingly, plaintiffs' request for costs should be deferred until the appellate process is completed.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

PLAINTIFFS' REPLY TO DEFENDANTS' OBJECTIONS TO PLAINTIFFS' BILL OF COSTS AND ATTORNEYS' FEES

INTRODUCTION

On May 12, 1983, this Court awarded summary judgment to the plaintiff students. The Court held that "*under the precise undisputed facts presented* the defendants had created an open forum for the plaintiff students' use, had excluded the plaintiffs by reason of the content of their speech, and had not demonstrated that the Establishment Clause required such discrimination." (Op. at 43). Thus, the plaintiffs prevailed in their suit for a declaratory judgment that they should be allowed to meet for religious speech at Williamsport Area High School.

As this Court recognized, the issue involved in this case was "an interesting, yet difficult and volatile area of constitutional law." (Op. at 1). The Court found it necessary to issue a forty-six page opinion to explain the legal considerations involved.

I. A PREVAILING PLAINTIFF SHOULD ORDINARILY RECOVER ATTORNEYS' FEES UNLESS SPECIAL CIRCUMSTANCES WOULD RENDER SUCH AN AWARD UNJUST.

The plaintiff students brought this action under 42 U.S.C. 1983 in order to vindicate their First and Fourteenth Amendment rights. Therefore, the awarding of attorneys' fees under 42 U.S.C. 1988 is appropriate. Indeed, as the Supreme Court has recently said, "[a] prevailing plaintiff ' "should ordinarily recover an attorney's fee unless special circumstances would render such an

award unjust.'" *Hensley* v. *Eckerhart*, 51 U.S.L.W. 4552, 4553 (May 16, 1983).

The purpose of Section 1988 is "to ensure 'effective access to the judicial process' for persons with civil rights grievances." *Id.* The awarding of reasonable attorneys' fees in civil rights litigation is necessary to ensure that competent counsel will be available to represent persons whose fundamental constitutional rights have been violated. This is particularly necessary in cases, such as this one, in which monetary damages are not awarded to the prevailing party.

The outstanding fact of this case is that before the lawsuit, the students were not allowed to meet by the school district; after the lawsuit, the school district can no longer deny them the right to meet, on the particular facts in this case. Therefore, the plaintiffs are clearly the prevailing party for purposes of Section 1988. Plaintiffs were "essentially successful" in their claim that under the First Amendment they could not be barred from engaging in religious speech on the public school campus when the school district's sole justification for its refusal to allow them to meet was the Establishment Clause. *See, Hughes* v. *Repko*, 578 F. 2d 483, 487 (3rd Cir. 1978) ("a prevailing party on a particular claim is one who fairly can be found by the district court to have essentially succeeded on such claim").

This court has broad discretion to award attorneys' fees in a case in which it has entered a final judgment, even if the judgment is on appeal. *See, e.g., Brown* v. *Fairleigh Dickinson University*, 560 F. Supp. 391 (D. Del. 1983); *Terket* v. *Lund*, 623 F.2d 29 (7th Cir. 1980). As the Supreme Court has stated, "[r]egardless of when attorney's fees are requested, the court's decision of entitlement to fees will therefore require an inquiry separate from the decision on the merits." *White* v. *New Hampshire Department of Employment Security*, 455 U.S.

445, 448 (1982). Therefore, the fact that the merits of this case are on appeal should not affect the district court's consideration of the attorneys' fees issue.

To delay payment for attorneys' fees until every appeal is exhausted would not further the Congressional intent of ensuring effective access to the judicial process. This case has been in litigation sixteen months. To require plaintiffs' attorneys to continue to bear the cost of litigation without payment, particularly when the litigation is being prolonged by a defendant, is to place an unfair burden on plaintiffs' counsel. Such a burden may discourage other counsel from accepting similar civil rights suits in the future where the plaintiffs are unable to pay counsel.

* * * *

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

MEMORANDUM AND ORDER

[Filed Dec. 14, 1983]

On May 12, 1983, this court issued an Opinion and Order in the above-captioned matter. *See Bender v. Williamsport Area School District*, 563 F. Supp. 697 (M.D. Pa. 1983). The court granted the defendants' motion for summary judgment with respect to the plaintiffs' claim that their rights under the Free Exercise Clause were being violated. The court granted the plaintiffs' motion for summary judgment with respect to their free speech claim. One of the individual defendants has appealed that decision. *See* Notice of Appeal, Document 29 of the Record.

Presently before the court is a "Bill of Costs and Attorneys' Fees" filed by the plaintiffs. The defendants have objected to the petition, arguing *inter alia*, that the matter of costs and attorneys' fees should not be addressed until the Court of Appeals for the Third Circuit has decided the appeal from the May 12, 1983 decision. For the reasons set forth below, the court will hold the petition in abeyance pending a decision on the appeal.

DISCUSSION

The defendants do not suggest that the court lacks power to award fees and costs while the appeal is pending. It is clear that the pendency of an appeal on the merits of a case does not divest the district court of jurisdiction to act on a fee petition. *E.g.*, *West v. Keve*, No. 83-1085, slip op. at 9 n.5 (3d Cir., Nov. 9, 1983); *Brown v. Fairleigh Dickinson University*, 560 F. Supp. 391, 402 n.4 (D.N.J. 1983). While not contesting the court's jurisdiction, the defendants assert:

> Here, in a case which presents close questions of law, a timely appeal has been filed by one of the defendants. A reversal by the Court of Appeals of this Court's decision in favor of plaintiffs would, because of the nature of the declaratory and injunctive relief sought, inure to the benefit of all defendants, and would change plaintiffs' position from that of prevailing parties to that of losing parties not entitled to costs of any sort. In these circumstances, the defendants submit that this Court should refrain from awarding any costs until the Court of Appeals has made its decision.

Defendants' Objections to Plaintiffs' Bill of Costs and Attorneys' Fees at 3, Document 34 of the Record.

It has been suggested that district courts "should proceed with attorneys' fees motions, even after an appeal is filed, as expeditiously as possible. Any party dissatisfied with the court's ruling may then file an appeal and apply to [the circuit] court for consolidation with the pending appeal of the merits." *Terket v. Lund*, 623 F.2d 29, 34 (7th Cir. 1980) (footnote omitted); *accord*, *Obin v. District 9 of the Int'l Assoc. of Machinists & Aerospace Workers*, 651 F.2d 574, 583 (8th Cir. 1981). This rule encouraging expeditious dispositions of fee petitions is designed "to avoid delay and wasted effort" arising from piecemeal appeals. *Overnite Transportation Co. v. Chicago Industrial Tire Co.*, 697 F.2d 789, 793 (7th Cir. 1983).

While such "unitary" appeals may promote judicial economy in some cases, our Court of Appeals has observed that this is not universally true. In *West v. Keve*, *supra*, a recent case involving the question whether a dissatisfied party must appeal after resolution of the case in chief or may wait until the fee petition is decided, the Court of Appeals stated:

> Only where the appellate court is able to affirm both the decision on the merits and the fee award

> will a unitary appeal filed after the fee determination be both more cost-effective and convenient. If the fee award is based on a "prevailing party" standard, however, *see e.g.*, 42 U.S.C. § 1988, then an appellate court's reversal on the merits may well require a redetermination of the fee issue. In such cases, a unitary appeal saves no appellate court time because later the court may be required to review a new fee determination.
>
> But it is the district court that expends the most time and energy on the difficult process of evaluating fee petitions and conducting hearings on them. To permit the option of a unitary appeal, with the possibility of appellate reversal on the merits, exposes district judges to the necessity of conducting two separate time-consuming fee proceedings, both prior to and after the appeal. This is an inefficient use of judicial resources, already overtaxed.

West v. Keve, *supra*, slip op. at 8.

Inasmuch as the decision on the merits in the present case involved an extremely close question of law, the court believes that the fee petition should be held in abeyance pending the outcome of the appeal.[1] An appropriate Order will enter.

/s/ William J. Nealon
Chief Judge, Middle District
of Pennsylvania

DATED: December 14, 1983

---

[1] Plaintiffs urge the court to decide the fee petition without waiting for the outcome of the appeal, arguing that "[t]o delay payment . . . until every appeal is exhausted would not further the Congressional intent of ensuring effective access to the judicial process." Plaintiffs' Reply to Defendants' Objections at 3, Document 36 of the Record. The court does not hold, however, that adjudication of the petition must be delayed pending *every* appeal. Today's decision is concerned only with the appeal presently pending.

ORDER

In accordance with the reasoning set forth in the accompanying Memorandum, IT IS HEREBY ORDERED THAT the instant petition for costs and attorneys' fees shall be held in abeyance pending the outcome of the appeal presently before the Court of Appeals in the above-captioned matter.

/s/ William J. Nealon
Chief Judge, Middle District
of Pennsylvania

DATED: December 14, 1983

Law Offices

McCORMICK, REEDER, NICHOLS, SARNO,
BAHL & KNECHT
836 West Fourth Street
P.O. Box 677
Williamsport, Pennsylvania 17703

August 13, 1984

RE: Bender, et al v. The Williamsport
Area School District, et al
No. 82-9692, U.S. District Court

The Honorable William J. Nealon
Chief Judge
U.S. District Court for the
Middle District of Pennsylvania
U.S. Courthouse
Scranton, PA 18501

Dear Judge Nealon:

This will constitute a status report from the Defendants with respect to the above matter.

Subsequent to the receipt of the July 24, 1984 Opinion and Order of the Court of Appeals, we had intended to submit a supplemental brief on the Bill of Costs and Attorney's Fees issue. That issue is, of course, in abeyance as per your Honor's Order of December 14, 1983. We have learned, however, that counsel for Plaintiffs filed, on August 7, 1984, a Motion for Reconsideration by the Court en banc. It is now our intention to file the supplemental brief after the Court of Appeals either denies the Motion for Reconsideration or grants the Motion and then issues its opinion. We wish to so do in order to properly address the issue of whether Plaintiffs are a "prevailing party" under Rule 54(d).

If your Honor wishes us to proceed in any other manner, please so direct.

Very truly yours,

McCORMICK, REEDER, NICHOLS,
SARNO, BAHL & KNECHT

By /s/ David R. Bahl
DAVID R. BAHL

DRB:rc

cc: Gerald W. Seevers, Esquire

bcc: Dr. Oscar W. Knade
Nathan W. Stuart, Esquire
Mr. Thomas H. Miller

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Title Omitted in Printing]

DEFENDANTS SUPPLEMENTAL BRIEF IN SUPPORT OF ITS OBJECTIONS TO PLAINTIFFS' BILL OF COSTS AND ATTORNEY'S FEES

I. PROCEDURAL HISTORY

Defendants refer to and adopt herein the procedural history contained in their Brief in Opposition to Plaintiffs' Reply to Defendant's Objections filed on or about September 21, 1983.

In addition thereto, the United States Court of Appeals for the Third Circuit issued its opinion dated July 24, 1984, a copy of which is attached hereto and marked Exhibit "A". Further, on August 15, 1984, the United States Court of Appeals for the Third Circuit denied plaintiffs' Motion for Rehearing by the Court en banc. A copy of that Order is attached hereto and marked as Exhibit "B".

II. STATEMENTS OF FACTS

Defendants refer to and adopt by reference the Statement of Facts contained in their Brief in Opposition to Plaintiffs' Reply to Defendants' Objections filed on or about September 21, 1983.

III. STATEMENT OF QUESTIONS INVOLVED

The initial issue raised in Defendants' Brief in Opposition to Plaintiffs' Reply to Defendants' Objections involved whether or not to await the disposition of the appeal to the Third Circuit Court of Appeals before ruling on plaintiffs' "bill of costs and attorney's fees." This issue is now mooted since the Court did indeed choose to await the disposition of the appeal to the Third Circuit Court of Appeals.

The second issue raised therein pertained to the propriety of the fee request made by the plaintiffs and is still a possible issue for resolution by the Court. The third issue raised therein involved the appropriate assessment of costs and, again, this issue is still before the Court.

The additional issue which is now presented, however, involves the effect of the decision of the United States Court of Appeals for the Third Circuit, Exhibit "A" hereto, on whether the plaintiffs are "prevailing parties" under Rule 54 of the Federal Rules of Civil Procedure and under 42 U.S.C. § 1988. It is the position of the defendants that the two decisions of the United States Court of Appeals for the Third Circuit attached hereto render the plaintiffs other than "prevailing parties" under the above stated rule and statute and, therefore, that the plaintiffs' "bill of costs and attorney's fees" request should be denied in full.

IV. ARGUMENT

On May 12, 1983, the United States District Court for the Middle District of Pennsylvania granted summary judgment to the plaintiffs on the grounds that "because the defendant school district is not constitutionally required to deny the plaintiffs the opportunity to meet, by doing so solely on constitutional grounds it has impermissibly burdened their free-speech rights." (Slip opinion, at page 4).

On July 24, 1984, the Court of Appeals for the Third Circuit issued its opinion reversing the District Court on the grounds that the Establishment Clause must prevail over free speech in a high school setting. "The facts of this case concededly present a close question. In sum, however, we conclude that the interest in protecting free speech within the context of the activity period as it exists at Williamsport Area High School is outweighed by the Establishment Clause concerns described earlier." (Exhibit "A", at page 47)

Finally, on August 15, 1984, the Court of Appeals for the Third Circuit denied plaintiffs' Motion for Rehearing stating "the petition for rehearing filed by appellees in the above-entitled case having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the Court in banc, the petition for rehearing is denied. Judges Gibbons and Weis would grant the petition for rehearing." (Exhibit "B", at page 2)

As a result of the two appellate decisions, the issue now presented is whether or not plaintiffs are "prevailing parties" for the purpose of receiving attorneys' fees and costs pursuant to the provisions of Rule 54 of the Federal Rules of Civil Procedure and 42 U.S.C. § 1988. It is defendants' position that plaintiffs are not "prevailing parties" because of the decisions by the Court of Appeals.

In this circuit, "a prevailing party on a particular claim is one who fairly can be found by the District Court to have essentially succeeded on such claim." *Hughes v. Repko*, 578 F.2d 483 (3d Cir. 1978), at page 487. Based on the two decisions by the Court of Appeals, plaintiffs in this case have not "essentially succeeded" in their claims. A plaintiff who receives a favorable judgment on the District Court level, which decision is subsequently reversed at the appellate level cannot have succeeded, "essentially" or otherwise, and so cannot be a "prevailing party" for purposes of attorney's fees and costs.

The Court in *Luria Brothers and Company, Inc. v. Allen, et al.*, 672 F.2d 347 (3d Cir. 1982), was explicit in its determination that a plaintiff who won on the District Court level, but lost on appeal, was not a prevailing party entitled to attorney's fees. Luria Brothers

was a sublessee that brought a state claim and a § 1983 claim against a private landlord and received a judgment in its favor from the District Court. The Court also awarded attorneys' fees pursuant to § 1988. The Third Circuit affirmed the judgment on the state claim, but reversed the judgment on the § 1983 claim. On page 357, the *Luria* Court stated "it is clear that, by our adjudication today, Luria cannot be said to have prevailed in its § 1983 count." The Court then held "accordingly, the grant of attorneys' fees by the District Court will be reversed, not on the basis of an abuse of discretion, but solely because under our decision today Luria is the losing and not the prevailing party in the § 1983 claim." *Luria*, supra, at page 358.

This same rationale has been employed in other circuits as well. In *American Infra-Red Radiant Co. v. Lambert Industries, Inc.*, 41 F.R.D. 161 (D. Minn. 1966), at pages 162-163, the Court stated "it is clear as a general rule that reversal of a judgment vacates the taxation of costs which is included as a part of the judgment. In this case, there was reversal as to only one part of the judgment, but it seems logical to conclude that the entire apportionment of costs has been vacated when the relative extent to which the parties prevailed has been changed by the reversal. That such a result is necessary is implicit in the conclusion of the Court of Appeals that the original division of costs should be modified 'in view of the outcome' of the appeal."

In *Laje v. R. E. Thomason General Hospital*, 665 F. 2d 724 (5th Cir., 1982) at page 730, the Circuit Court reversed part of the District Court's decision and, accordingly, remanded the attorneys' fees award "so that the District Court may consider whether any modification of the award is required in light of the disposition of this appeal. In particular, the District Court should take into consideration the deletion of the portions of the award attributable to back pay, as well as the services rendered on the issues affirmed."

The Circuit Court in *Lowman v. Davies, et al.*, 704 F. 2d 1044 (8th Cir. 1983), reversed the decision of the District Court and stated, at page 1046, "the award of attorneys' fees must also be reversed. (Citation omitted). Lowman is no longer a 'prevailing party' within the meaning of the Civil Rights Attorney's Fees Award Act, 42 U.S.C. § 1988." In another Eighth Circuit case, *Harris v. Pirch*, 677 F. 2d 681 (8th Cir. 1982), the Circuit Court reversed the District Court and stated that the reversal negated the award of attorneys' fees and costs made by the lower Court. (page 689)

The case of *Doe v. Busbee*, 684 F. 2d 1375 (11th Cir. 1982), was somewhat different in terms of appellate review, but achieved basically the same determination of what constitutes a prevailing party. The District Court found in favor of the plaintiff, and defendant appealed. The Court of Appeals remanded the case to the District Court for re-trial. During the appellate process, the United States Supreme Court made various rulings in other cases that undermined the District Court's initial opinion; therefore, on remand, the District Court vacated the previous judgment and dismissed the Complaint. Thus, although the plaintiffs were successful in obtaining a preliminary injunction, a permanent injunction, and declaratory relief, "the plaintiffs ultimately did not prevail on a single legal issue in the case." *Doe*, supra at page 1381. The Circuit Court then stated "in view of the purpose behind the Attorney's Fees Award Act, we conclude that plaintiffs-appellees are not prevailing parties in this litigation. Their successes were merely temporary, and any benefit flowing from their successes in the District Court was awarded under a mistake of law." *Doe*, supra, at page 1381. See also *Jones v. Diamond*, 594 F. 2d 997 (5th Cir. 1979); *Brown v. American Enka Corporation*, 452 F.S. 154 (E.D. Tenn. 1976); and *Fleischer v. A.A.P., Inc.*, 36 F.R.D. 31 (S.D. New York 1964).

V. CONCLUSION

In light of the above-stated case law, as well as the two attached decisions of the Court of Appeals for the Third Circuit in the case at bar, plaintiffs are not "prevailing parties" under Rule 54 and § 1988 and, therefore, their "bill of costs and attorney's fees" request should be denied in full.

Respectfully submitted,

McCormick, Reeder, Nichols,
Sarno, Bahl & Knecht

By /s/ David R. Bahl
David R. Bahl
I.D. No. 10347
Attorney for Defendants

8503 Strand Court
Springfield, VA 22151

September 11, 1984

The Honorable William J. Nealon
Chief Judge
U.S. District Court for the
Middle District of Pennsylvania
U.S. Courthouse
Scranton, PA 18501

Re: *Bender, et al* v. *The Williamsport Area School District, et al*, No. 82-9692, U.S. District Court

Dear Judge Nealon:

This letter is in response to defendants' supplemental brief filed with the Court on August 29, 1984.

On August 28, 1984, the Court of Appeals for the Third Circuit issued an order staying the issuance of its mandate to November 13, 1984. The stay will be continued until final disposition by the United States Supreme Court, if a petition for a writ of certiorari is filed by November 13. Plaintiffs intend to file a petition for a writ of certiorari in the United States Supreme Court by that date. Also, it is plaintiffs' understanding that technically the order of this Court is still in effect pending the issuance of the formal mandate of the Court of Appeals.

Enclosed is a copy of the August 28, 1984, order of the Court of Appeals. Also enclosed are copies of the petition for rehearing and motion for stay of mandate filed with the Court of Appeals for your information.

Plaintiffs request that this Court take no further action on their petition for costs and attorneys' fees until final disposition by the Supreme Court. The reasons

given in the memorandum accompanying this Court's order of December 14, 1983, support this request, in the same way they supported defendants' request when the case was before the Court of Appeals.

If this request is denied, or if the petition for a writ of certiorari is denied, plaintiffs would then wish to address the issue of their status as "prevailing party" for purposes of costs and attorneys' fees in the action before this Court.

If your Honor wishes us to proceed in any other manner, please so direct.

Sincerely

/s/ Samuel E. Ericsson
SAMUEL E. ERICSSON

cc: David R. Bahl, Esq.

NOTICE OF APPEAL TO U.S. COURT OF APPEALS, THIRD CIRCUIT

[Title Omitted in Printing]

[Filed Jun. 10, 1983]

Notice is hereby given that John C. Youngman, Jr., one of the Defendants appeals to the United States Court of Appeals for the Third Circuit from [ ] Judgment [X] Order [ ] Other (Specify) of Judge Nealon (copy attached), entered in this action on May 12, 1983.

DATED: June 10, 1983

Gerald W. Seevers, Esquire
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/s/ John C. Youngman, Jr.
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ORDER

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
Washington, D.C. 20543

[Feb. 20, 1985]

February 19, 1985

Samuel Eric Hans Ericsson, Esquire
6901 Braddock Road
P.O. Box 1492
Springfield, Virginia 22151

Re: 84-773—Michael Bender, et al. v.
Williamsport School District, et al.

Dear Mr. Ericsson:

The Court today entered the following order in the above case:

> "The motion of National Association of Secondary School Principals for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is granted. Justice Powell took no part in the consideration or decision of this motion and this petition."

Enclosed are memorandums describing the time requirements and procedures under the Rules.

I have been instructed to inform you that Rule 34.1(a) is satisfied by having the initial sheet in the brief state the "Questions Presented" without more. Counsel should not print on this page the title of the case or any other descriptive matter. A sample sheet is enclosed.

The additional docketing fee of $100.00, Rule 45(a), is now due and payable.

Very truly yours,

ALEXANDER L. STEVAS
Clerk

/s/ Sandy Nelsen
SANDY NELSEN
Assistant Clerk

Enclosures